

GOVERNMENT OF INDIA.  
LEGISLATIVE DEPARTMENT.

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THE  
UNREPEALED GENERAL ACTS

OF

THE GOVERNOR GENERAL IN COUNCIL,

WITH CHRONOLOGICAL TABLE, NOTES AND AN INDEX.

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From 1882 to 1884, both inclusive.

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VOL. IV.

SECOND EDITION.

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## PREFACE.

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THIS, the second edition of Volume IV of the General Acts, has been compiled on the same lines as the three preceding volumes. The work of revision again has devolved principally on Mr. John Morison, Barrister-at-Law, Personal Assistant to the Secretary to the Government of India in this Department.

H. W. C. CARNDUFF,  
*Deputy Secretary to the Govt. of India,  
Legislative Department.*

SIMLA ;  
*The 25th November, 1898.*



# CHRONOLOGICAL TABLE OF THE UNREPEALED GENERAL ACTS OF THE GOVERNOR GENERAL IN COUNCIL, 1882-1884.

1	2	3	4	5
Year	No	Short Title	Whether repealed or otherwise affected by legislation.	Page.
1882	II	The Indian Trusts Act, 1882.	Rep. in part, Act XII of 1891.	1
	IV	The Transfer of Property Act, 1882	Amended, Act III of 1885. Application of certain sections extended. Act XIII of 1889, s. 32 (1). Rep. as to Crown Grants, Act XV of 1895.	40
	VI	The Indian Companies Act, 1882	Rep. in part, Stamp Act. 1899. Amended, Act VI of 1887; Act XII of 1891, Amended and supplemented, Act XII of 1895	100
	VII	The Powers-of-attorney Act, 1882	Rep. in part, Act XII of 1891.	216
	VIII	The Indian Penal Code Amendment Act, 1882.	Virtually amended, Act X of 1886, s. 21.	218
	IX	The Prisoners Act Amendment Act, 1882.	.....	219
	XII	The Indian Salt Act 1882.	Rep. in part, Act XX of 1884, Act XII of 1891 Rep. in part and amended, Act XIX of 1890.	221
	XIV	The Code of Civil Procedure.	Rep. in part, Act XIV of 1885; Act IV of 1886, Act X of 1886, s. 24, (2), Act VIII of 1887; Act XIII of 1889; Act VIII of 1890. (See next page )	262

*N B* — For complete Chronological list of all the Acts of the Governor General in Council, whether repealed or unrepealed, see Wigley's Chronological Tables and Index of the Indian Statutes, Vol. I, Ed. 1887.

**UNREPEALED GENERAL ACTS OF THE GOVERNOR GENERAL  
IN COUNCIL—*contd.***

1	2	3	4	5
Year.	No.	Short Title	Whether repealed or otherwise affected by legislation.	Page.
1882	XIV <i>contd.—</i>		Rep. in part and amended, Act VII of 1888, ss. 3-64 ; Act XII of 1891 (in the Central Provinces), Act XX of 1875, ss. 11 and 12 (added by Act II of 1879, s. 2), and see section 3 of the Code ; (in Ajmere-Merwara), Reg. I of 1877, ss. 2 and 28, and see s. 3 of the Code. Amended, Act XV of 1882, s. 3, and see s. 3 of the Code ; Act VII of 1887, s. 11 ; Act VI of 1888, ss. 2-8 ; Act X of 1888, ss. 1-3 ; Act VIII of 1890, s. 53 ; Act VI of 1892, ss. 2-4 ; Act V of 1894 ; Act VII of 1895, ss. 1-2 ; Act XIII of 1895 ; (in Oudh), Act XVIII of 1876, ss. 19, 20, 22, and see s. 3 of the Code ; (in Coorg), Reg. II of 1891, ss. 12A, 12B (added by Reg. I of 1885, s. 9) ; (in places to which the Act extends) Act IV of 1882, s. 87, and see s. 3 of the Code ; (in the Punjab), Act XVIII of 1884, s. 70 (as modi- fied by Act XVI of 1887, s. 3).	
	XV	The Presidency Small Cause Courts Act, 1882.	Rep. in part, Act XII of 1891, Act VII of 1896 Amended, Act X of 1888 ; Act VII of 1892, s. 12. Rep. in part and amended, Act I of 1895.	590

UNREPEALED GENERAL ACTS OF THE GOVERNOR GENERAL  
IN COUNCIL—*concl'd.*

1	2	3	4	5
Year.	No	Short Title.	Whether repealed or otherwise affected by legislation.	Page.
1882	XIX	Punjab University Act, 1882.	Rep. in part, Act XII of 1891.	622
	XX	The Indian Paper Currency Act, 1882.	Rep. in part, Act XIII of 1898. Rep. in part and amended, Act VIII of 1893. Amended, Act XXI of 1886. Amended temporarily, Act II of 1898. <sup>1</sup>	634
1883	II	The Elephants' Preservation Act (1879) Amendment Act, 1883.	.....	641
	V	The Indian Merchant Shipping Act, 1883.	Rep. in part, Act X of 1889. Rep. in part and amended, Act VI of 1891, ss 9-13, Act XII of 1891.	644
	XIX	The Land Improvement Loans Act, 1883.	Rep. in part, Act XII of 1891.	658
	XXI	The Indian Emigration Act, 1883.	Rep. in part and amended, Act XVIII of 1890. Amended, Act I of 1896, Act VII of 1897.	668
1884	I	The Indian Universities (Honorary Degrees) Act, 1884.	Rep. in part, Act XII of 1891.	701
	IV	The Indian Explosives Act, 1884.	Rep. in part, Act X of 1889; Act XII of 1891.	703
	VI	The Inland Steam-Vessels Act, 1884.	Rep. in part and amended, Act III of 1890, ss. 1-14; Act XII of 1891. Amended, Act XIII of 1891.	713
	VII	The Indian Steam-ships Act, 1884.	Rep. in part, Act X of 1887, Act XII of 1891. Rep. in part and amended, Act III of 1890, ss. 15-22.	740
	IX	The Legal Practitioners Act, 1884.	Rep. in part, Act XII of 1891.	753
	XII	The Agriculturists Loans Act, 1884.	.....	755

<sup>1</sup> The amendment is to remain in force till the 21st of July, 1900, see the Indian Paper Currency Act, 1898 (VIII of 1898).



THE  
UNREPEALED GENERAL ACTS  
OF  
THE GOVERNOR GENERAL IN COUNCIL.

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THE INDIAN TRUSTS ACT, 1882.

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CONTENTS.

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PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title.  
Commencement.  
Local extent.  
Savings.
  2. Repeal of enactments.
  3. Interpretation-clause.  
Expressions defined in Act IX of 1872.
- 

CHAPTER II.

OF THE CREATION OF TRUSTS.

4. Lawful purpose.
5. Trust of immoveable property.  
Trust of moveable property.
6. Creation of trust
7. Who may create trusts.
8. Subject of trust.

## SECTIONS.

9. Who may be beneficiary  
Disclaimer by beneficiary.
10. Who may be trustee  
No one bound to accept trust.  
Acceptance of trust.  
Disclaimer of trust.

---

### CHAPTER III.

## OF THE DUTIES AND LIABILITIES OF TRUSTEES

11. Trustee to execute trust
12. Trustee to inform himself of state of trust-property.
13. Trustee to protect title to trust-property.
14. Trustee not to set-up title adverse to beneficiary.
15. Care required from trustee.
16. Conversion of perishable property.
17. Trustee to be impartial
18. Trustee to prevent waste.
19. Accounts and information
20. Investment of trust-money.
21. Mortgage of land pledged to Government under Act XXVI of 1874.  
Deposit in Government Savings Bank.
22. Sale by trustee directed to sell within specified time.
23. Liability for breach of trust.
24. No set-off allowed to trustee.
25. Non-liability for predecessor's default
26. Non-liability for co-trustee's default  
Joining in receipt for conformity.
27. Several liability of co-trustees  
Contribution as between co-trustees.
28. Non-liability of trustee paying without notice of transfer by beneficiary.
29. Liability of trustee where beneficiary's interest is forfeited to Government.
30. Indemnity of trustees.

---

### CHAPTER IV

## OF THE RIGHTS AND POWERS OF TRUSTEES.

31. Right to title-deeds.
32. Right to reimbursement of expenses.  
Right to be recouped for erroneous overpayment
33. Right to indemnity from gainer by breach of trust
34. Right to apply to Court for opinion in management of trust-property.

## SECTIONS.

- 35. Right to settlement of accounts.
- 36. General authority of trustee.
- 37. Power to sell in lots, and either by public auction or private contract
- 38. Power to sell under special conditions.  
Power to buy-in and re-sell  
Time allowed for selling trust-property.
- 39. Power to convey
- 40. Power to vary investments.
- 41. Power to apply property of minors, &c, for their maintenance, &c.
- 42. Power to give receipts.
- 43. Power to compound, &c.
- 44. Power to several trustees of whom one disclaims or dies.
- 45. Suspension of trustee's powers by decree.

---

CHAPTER V.

## OF THE DISABILITIES OF TRUSTEES.

- 46. Trustee cannot renounce after acceptance.
- 47. Trustee cannot delegate
- 48. Co-trustees cannot act singly.
- 49. Control of discretionary power
- 50. Trustee may not charge for services.
- 51. Trustee may not use trust-property for his own profit.
- 52. Trustee for sale or his agent may not buy
- 53. Trustee may not buy beneficiary's interest without permission.  
Trustee for purchase.
- 54. Co-trustees may not lend to one of themselves.

---

CHAPTER VI.

## OF THE RIGHTS AND LIABILITIES OF THE BENEFICIARY.

- 55. Rights to rents and profits.
- 56. Right to specific execution.  
Right to transfer of possession
- 57. Right to inspect and take copies of instrument of trust, accounts, &c.
- 58. Right to transfer beneficial interest.
- 59. Right to sue for execution of trust.
- 60. Right to proper trustees
- 61. Right to compel to any act of duty.
- 62. Wrongful purchase by trustee.
- 63. Following trust-property—  
into the hands of third persons;  
into that into which it has been converted.
- 64. Saving of rights of certain transferees.
- 65. Acquisition by trustee of trust-property wrongfully converted.
- 66. Right in case of blended property.

## SECTIONS.

- 67. Wrongful employment by partner-trustee of trust-property for partnership purposes.
- 68. Liability of beneficiary joining in breach of trust.
- 69. Rights and liabilities of beneficiary's transferee.

---

CHAPTER VII.

## OF VACATING THE OFFICE OF TRUSTEE.

- 70. Office how vacated.
- 71. Discharge of trustee.
- 72. Petition to be discharged from trust.
- 73. Appointment of new trustees on death, &c.
- 74. Appointment by Court.  
Rule for selecting new trustees.
- 75. Vesting of trust-property in new trustees.  
Powers of new trustees.
- 76. Survival of trust.

---

CHAPTER VIII.

## OF THE EXTINCTION OF TRUSTS.

- 77. Trust how extinguished
- 78. Revocation of trust.
- 79. Revocation not to defeat what trustees have duly done.

---

CHAPTER IX.

## OF CERTAIN OBLIGATIONS IN THE NATURE OF TRUSTS.

- 80. Where obligation in nature of trust is created
- 81. Where it does not appear that transferor intended to dispose of beneficial interest.
- 82. Transfer to one for consideration paid by another.
- 83. Trust incapable of execution or executed without exhausting trust-property
- 84. Transfer for illegal purpose.
- 85. Bequest for illegal purpose.  
Bequest of which revocation is prevented by coercion.
- 86. Transfer pursuant to rescindable contract
- 87. Debtor becoming creditor's representative.
- 88. Advantage gained by fiduciary
- 89. Advantage gained by exercise of undue influence.
- 90. Advantage gained by qualified owner.
- 91. Property acquired with notice of existing contract.

## (Chapter I.—Preliminary Sec. 1.)

## SECTIONS.

- 92. Purchase by person contracting to buy property to be held on trust.
- 93. Advantage secretly gained by one of several compounding creditors.
- 94. Constructive trusts in cases not expressly provided for.
- 95. Obligor's duties, liabilities and disabilities.
- 96. Saving of rights of *bonâ fide* purchasers.

## THE SCHEDULE.

ACT No. II OF 1882<sup>1</sup>.

[13th January, 1882.]

An Act to define and amend the law relating to Private Trusts and Trustees.

WHEREAS it is expedient to define and amend the law relating to private trusts and trustees; It is hereby enacted as follows.— Preamble.

## CHAPTER I.

## PRELIMINARY.

1. This Act may be called the Indian Trusts Act, 1882: and it shall come into force on the first day of March, 1882. Short title.  
Commence-  
ment.

It extends in the first instance to the territories respectively administered by the Governor of Madras in Council, the Lieutenant-Governors of the North-Western Provinces and the Punjab, the Chief Commissioners of Oudh, the Central Provinces, Coorg and Assam, and the Local Government may from time to time, by notification<sup>2</sup> in the official Gazette, extend it to any other part of British India. But nothing herein contained affects the rules of Muhammadan law as to *waqf*, or the mutual relations of the members of an undivided family as determined by any customary or per- Local extent.  
  
Savings.

<sup>1</sup> For Report of the Indian Law Commission on the Private Trusts Bill which they were instructed to consider among others, see Gazette of India, 1880, Supplement, p 104, and for the Statement of Objects and Reasons, see Gazette of India, 1880, Pt V, p 476; for Report of the Select Committee, see *ibid*, Supplement, 1881, p 766, for further Report of the Select Committee, see *ibid*, Supplement, 1882, p 67; for Proceedings in Council, see *ibid*, Supplement, 1881, p 687, and *ibid*, Supplement, 1882, p 68

<sup>2</sup> The Act has, under this section, been extended—

(a) to the whole of the Bombay Presidency, including the Scheduled Districts—see Notification No 4802, printed, Bombay Gazette, 1891, Pt I, p 743.

(b) to the ordinary civil jurisdiction of the Recorder of Rangoon—see notification noted at p 89 of the Burma Rules Manual, Ed 1897.

(Chapter I.—Preliminary. Secs. 2-3. Chapter II.—Of the Creation of Trusts. Sec. 4.)

sonal law, or applies to public or private religious or charitable endowments, or to trusts to distribute prizes taken in war among the captors, and nothing in the second Chapter of this Act applies to trusts created before the said day.

Repeal of enactments.

2. The Statute and Acts mentioned in the Schedule hereto annexed shall, to the extent mentioned in the said Schedule, be repealed, in the territories to which this Act for the time being extends.

Interpretation-clause—"trust":

3. A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner:

"author of the trust":

the person who reposes or declares the confidence is called the "author of the trust": the person who accepts the confidence is called the "trustee": the person for whose benefit the confidence is accepted is called the "beneficiary": the subject-matter of the trust is called "trust-property" or "trust-money": the "beneficial interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust-property; and the instrument, if any, by which the trust is declared is called the "instrument of trust":

"trustee":  
"beneficiary":  
"trust-property":  
"beneficial interest":  
"instrument of trust":  
"breach of trust":

a breach of any duty imposed on a trustee, as such, by any law for the time being in force, is called a "breach of trust":

"registered":

and in this Act, unless there be something repugnant in the subject or context, "registered" means registered under the law for the registration of documents for the time being in force: a person is said to have "notice" of a fact either when he actually knows that fact, or when, but for wilful abstention from inquiry or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent, under the circumstances mentioned in the Indian Contract Act, 1872<sup>1</sup>, section 229; and all expressions used herein and defined in the Indian Contract Act, 1872, shall be deemed to have the meanings respectively attributed to them by that Act.

"notice."

Expressions defined in Act IX of 1872

IX of 1872.

## CHAPTER II.

### OF THE CREATION OF TRUSTS

Lawful purpose.

4. A trust may be created for any lawful purpose. The purpose of a trust is lawful unless it is (a) forbidden by law, or (b) is of such a nature

<sup>1</sup> Printed, General Acts, Vol II, p 299.

*(Chapter II.—Of the Creation of Trusts Secs 5-6.)*

that, if permitted, it would defeat the provisions of any law, or (c) is fraudulent, or (d) involves or implies injury to the person or property of another, or (e) the Court regards it as immoral or opposed to public policy.

Every trust of which the purpose is unlawful is void. And where a trust is created for two purposes, of which one is lawful and the other unlawful, and the two purposes cannot be separated, the whole trust is void.

*Explanation.*—In this section the expression “law” includes, where the trust-property is immoveable and situate in a foreign country, the law of such country.

*Illustrations.*

(a) A conveys property to B in trust to apply the profits to the nurture of female foundlings to be trained up as prostitutes. The trust is void.

(b) A bequeaths property to B in trust to employ it in carrying on a smuggling business, and out of the profits thereof to support A's children. The trust is void.

(c) A, while in insolvent circumstances, transfers property to B in trust for A during his life, and after his death to B. A is declared an insolvent. The trust for A is invalid as against his creditors.

5. No trust in relation to immoveable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the trustee.

Trust of im-  
moveable  
property.  
Trust of  
moveable  
property.

No trust in relation to moveable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee.

These rules do not apply where they would operate so as to effectuate a fraud.

6. Subject to the provisions of section 5, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts (a) an intention on his part to create thereby a trust, (b) the purpose of the trust, (c) the beneficiary, and (d) the trust-property, and (unless the trust is declared by will or the author of the trust is himself to be the trustee) transfers the trust-property to the trustee.

Creation of  
trust.

*Illustrations.*

(a) A bequeaths certain property to B, “having the fullest confidence that he will dispose of it for the benefit of” C. This creates a trust so far as regards A and C.

(b) A bequeaths certain property to B, “hoping he will continue it in the family.” This does not create a trust, as the beneficiary is not indicated with reasonable certainty.

## (Chapter II.—Of the Creation of Trusts. Secs. 7-10)

(c) A bequeaths certain property to B, requesting him to distribute it amongst such members of C's family as B should think most deserving. This does not create a trust, for the beneficiaries are not indicated with reasonable certainty.

(d) A bequeaths certain property to B, desiring him to divide the bulk of it among C's children. This does not create a trust, for the trust-property is not indicated with sufficient certainty.

(e) A bequeaths a shop and stock-in-trade to B, on condition that he pays A's debts and a legacy to C. This is a condition, not a trust for A's creditors and C.

Who may  
create trusts.

7. A trust may be created—

(a) by every person competent to contract<sup>1</sup>, and,

(b) with the permission of a principal Civil Court of original jurisdiction, by or on behalf of a minor;

but subject in each case to the law for the time being in force as to the circumstances and extent in and to which the author of the trust may dispose of the trust-property.

Subject of  
trust.

8. The subject-matter of a trust must be property transferable to the beneficiary.

It must not be a merely beneficial interest under a subsisting trust.

Who may be  
beneficiary  
Disclaimer by  
beneficiary.

9. Every person capable of holding property may be a beneficiary.

A proposed beneficiary may renounce his interest under the trust by disclaimer addressed to the trustee, or by setting up, with notice of the trust, a claim inconsistent therewith.

Who may be  
trustee

10. Every person capable of holding property may be a trustee; but, where the trust involves the exercise of discretion, he cannot execute it unless he is competent to contract.

No one bound  
to accept  
trust

No one is bound to accept a trust.

Acceptance of  
trust

A trust is accepted by any words or acts of the trustee indicating with reasonable certainty such acceptance.

Disclaimer of  
trust

Instead of accepting a trust, the intended trustee may, within a reasonable period, disclaim it, and such disclaimer shall prevent the trust-property from vesting in him.

A disclaimer by one of two or more co-trustees vests the trust-property in the other or others, and makes him or them sole trustee or trustees from the date of the creation of the trust.

#### Illustrations

(a) A bequeaths certain property to B and C, his executors, as trustees for D.

<sup>1</sup> See s 11 of the Indian Contract Act, 1872 (IX of 1872), printed, General Acts, Vol II, p 299, and s 11 of the Assam Labour and Emigration Act, 1882 (I of 1882), printed, Assam Code, Ed 1897, p 134

*(Chapter III.—Of the Duties and Liabilities of Trustees. Secs. 11-12)*

B and C prove A's will This is in itself an acceptance of the trust, and B and C hold the property in trust for D.

(b) A transfers certain property to B in trust to sell it, and to pay out of the proceeds A's debts B accepts the trust and sells the property So far as regards B, a trust of the proceeds is created for A's creditors.

(c) A bequeaths a lākh of rupees to B upon certain trusts and appoints him his executor B severs the lākh from the general assets and appropriates it to the specific purpose This is an acceptance of the trust

## CHAPTER III.

## OF THE DUTIES AND LIABILITIES OF TRUSTEES.

11. The trustee is bound to fulfil the purpose of the trust, and to obey the directions of the author of the trust given at the time of its creation, except as modified by the consent of all the beneficiaries being competent to contract.

Trustee to execute trust.

Where the beneficiary is incompetent to contract, his consent may, for the purposes of this section, be given by a principal Civil Court of original jurisdiction.

*Explanation.*—Unless a contrary intention be expressed, the purpose of any direction when to do so would be impracticable, illegal or manifestly injurious to the beneficiaries

*Explanation* —Unless a contrary intention be expressed, the purpose of a trust for the payment of debts shall be deemed to be (a) to pay only the debts of the author of the trust existing and recoverable at the date of the instrument of trust, or, when such instrument is a will, at the date of his death, and (b) in the case of debts not bearing interest, to make such payment without interest.

*Illustrations.*

(a) A, a trustee, is simply authorised to sell certain land by public action. He cannot sell the land by private contract.

(b) A, a trustee, of certain land for X, Y and Z, is authorized to sell the land to B for a specified sum X, Y and Z, being competent to contract, consent that A may sell the land to C for a less sum A may sell the land accordingly

(c) A, a trustee for B and her children, is directed by the author of the trust to lend, on B's request, trust-property to B's husband, C, on the security of his bond. C becomes insolvent, and B requests A to make the loan A may refuse to make it

12. A trustee is bound to acquaint himself, as soon as possible, with the nature and circumstances of the trust-property; to obtain, where necessary, a transfer of the trust-property to himself; and (subject to the

Trustee to inform himself of state of trust-property.

## (Chapter III.—Of the Duties and Liabilities of Trustees Secs. 13-15)

provisions of the instrument of trust) to get in trust-moneys invested on insufficient or hazardous security.

*Illustrations*

(a) The trust-property is a debt outstanding on personal security. The instrument of trust gives the trustee no discretionary power to leave the debt so outstanding. The trustee's duty is to recover the debt without unnecessary delay

(b) The trust-property is money in the hands of one of two co-trustees. No discretionary power is given by the instrument of trust. The other co-trustee must not allow the former to retain the money for a longer period than the circumstances of the case required

Trustee to  
protect title  
to trust-  
property

13. A trustee is bound to maintain and defend all such suits, and (subject to the provisions of the instrument of trust) to take such other steps as, regard being had to the nature and amount or value of the trust-property, may be reasonably requisite for the preservation of the trust-property and the assertion or protection of the title thereto.

*Illustration*

The trust-property is immoveable property which has been given to the author of the trust by an unregistered instrument. Subject to the provisions of the Indian Registration Act, 1877<sup>1</sup>, the trustee's duty is to cause the instrument to be registered III of 1877.

Trustee not  
to set up  
title adverse  
to beneficiary.  
Care required  
from trustee.

14. The trustee must not for himself or another set-up or aid any title to the trust-property adverse to the interest of the beneficiary.

15. A trustee is bound to deal with the trust-property as carefully as a man of ordinary prudence would deal with such property if it were his own; and, in the absence of a contract to the contrary, a trustee so dealing is not responsible for the loss, destruction, or deterioration of the trust-property.

*Illustrations*

(a) A, living in Calcutta, is a trustee for B, living in Bombay. A remits trust-funds to B by bills drawn by a person of undoubted credit in favour of the trustee as such, and payable at Bombay. The bills are dishonoured. A is not bound to make good the loss.

(b) A, a trustee of leasehold property, directs the tenant to pay the rents on account of the trust to a banker, B, then in credit. The rents are accordingly paid to B, and A leaves the money with B only till wanted. Before the money is drawn out, B becomes insolvent. A, having had no reason to believe that B was in insolvent circumstances, is not bound to make good the loss.

(c) A, a trustee of two debts for B, releases one and compounds the other, in good faith, and reasonably believing that it is for B's interest to do so. A is not bound to make good any loss caused thereby to B.

<sup>1</sup> Printed, General Acts, Vol III, Ed 1898, p 41

*(Chapter III.—Of the Duties and Liabilities of Trustees. Secs. 16-17.)*

(d) A, a trustee directed to sell the trust-property by auction, sells the same, but does not advertise the sale and otherwise fails in reasonable diligence in inviting competition. A is bound to make good the loss caused thereby to the beneficiary.

(e) A, a trustee for B, in execution of his trust, sells the trust-property, but from want of due diligence on his part fails to receive part of the purchase-money. A is bound to make good the loss thereby caused to B.

(f) A, a trustee for B of a policy of insurance, has funds in hand for payment of the premiums. A neglects to pay the premiums, and the policy is consequently forfeited. A is bound to make good the loss to B.

(g) A bequeaths certain moneys to B and C as trustees, and authorizes them to continue trust-moneys upon the personal security of a certain firm in which A had himself invested them. A dies, and a change takes place in the firm. B and C must not permit the moneys to remain upon the personal security of the new firm.

(h) A, a trustee for B, allows the trust to be executed solely by his co-trustee, C. C misapplies the trust-property. A is personally answerable for the loss resulting to B.

16. Where the trust is created for the benefit of several persons in succession, and the trust-property is of a wasting nature or a future or reversionary interest, the trustee is bound, unless an intention to the contrary may be inferred from the instrument of trust, to convert the property into property of a permanent and immediately profitable character.

Conversion of perishable property.

*Illustrations*

(a) A bequeaths to B all his property in trust for C during his life, and on his death for D, and on D's death for E. A's property consists of three leasehold houses, and there is nothing in A's will to show that he intended the houses to be enjoyed in specie. B should sell the houses, and invest the proceeds in accordance with section 20.

(b) A bequeaths to B his three leasehold houses in Calcutta and all the furniture therein in trust for C during his life, and on his death for D, and on D's death for E. Here an intention that the houses and furniture should be enjoyed in specie appears clearly, and B should not sell them.

17. Where there are more beneficiaries than one, the trustee is bound to be impartial, and must not execute the trust for the advantage of one at the expense of another.

Trustee to be impartial.

Where the trustee has a discretionary power, nothing in this section shall be deemed to authorize the Court to control the exercise reasonably and in good faith of such discretion.

*Illustration.*

A, a trustee for B, C and D, is empowered to choose between several specified modes of investing the trust-property. A in good faith chooses one of these modes. The Court will not interfere, although the result of the choice may be to vary the relative rights of B, C and D.

*(Chapter III—Of the Duties and Liabilities of Trustees. Secs. 18-21.)*

Trustee to  
prevent  
waste.

18. Where the trust is created for the benefit of several persons in succession and one of them is in possession of the trust-property, if he commits, or threatens to commit, any act which is destructive or permanently injurious thereto, the trustee is bound to take measures to prevent such act.

Accounts  
and informa-  
tion

19. A trustee is bound (a) to keep clear and accurate accounts of the trust-property, and (b), at all reasonable times, at the request of the beneficiary, to furnish him with full and accurate information as to the amount and state of the trust-property.

Investment  
of trust-  
money.

20. Where the trust-property consists of money and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound (subject to any direction contained in the instrument of trust) to invest the money on the following securities, and on no others:—

- (a) in promissory notes, debentures, stock or other securities of the Government of India, or of the United Kingdom of Great Britain and Ireland;
- (b) in bonds, debentures, and annuities charged by the Imperial Parliament on the revenues of India;
- (c) in stock or debentures of, or shares in, Railway or other Companies the interest whereon shall have been guaranteed by the Secretary of State for India in Council;
- (d) in debentures or other securities for money issued by, or on behalf of, any municipal body under the authority of any Act of a legislature established in British India;
- (e) on a first mortgage of immoveable property situate in British India: Provided that the property is not a leasehold for a term of years and that the value of the property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the mortgage-money; or
- (f) on any other security expressly authorized by the instrument of trust, or by any rule which the High Court may from time to time prescribe in this behalf:

Provided that, where there is a person competent to contract and entitled in possession to receive the income of the trust-property for his life, or for any greater estate, no investment on any security mentioned or referred to in clauses (d), (e), and (f) shall be made without his consent in writing.

Mortgage of  
land pledged  
to Govern-

21. Nothing in section 20 shall apply to investments made before this Act comes into force, or shall be deemed to preclude an investment on

*(Chapter III.—Of the Duties and Liabilities of Trustees Secs 22-23.)*

a mortgage of immoveable property already pledged as security for an advance under the Land Improvement Act, 1871<sup>1</sup>, or, in case the trust-money does not exceed three thousand rupees, a deposit thereof in a Government Savings Bank.

ment under  
Act XXVI  
of 1871  
Deposit in  
Government  
Savings  
Bank  
Sale by  
trustee  
directed to  
sell within  
specified  
time.

22. Where a trustee directed to sell within a specified time extends such time, the burden of proving, as between himself and the beneficiary, that the latter is not prejudiced by the extension lies upon the trustee, unless the extension has been authorized by a principal Civil Court of original jurisdiction.

*Illustration*

A bequeaths property to B, directing him with all convenient speed and within five years to sell it, and apply the proceeds for the benefit of C. In the exercise of reasonable discretion, B postpones the sale for six years. The sale is not thereby rendered invalid, but C, alleging that he has been injured by the postponement, institutes a suit against B to obtain compensation. In such suit the burden of proving that C has not been injured lies on B.

23. Where the trustee commits a breach of trust, he is liable to make good the loss which the trust-property or the beneficiary has thereby sustained, unless the beneficiary has by fraud induced the trustee to commit the breach, or the beneficiary, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, concurred in the breach, or subsequently acquiesced therein, with full knowledge of the facts of the case and of his rights as against the trustee.

Liability for  
breach of  
trust

A trustee committing a breach of trust is not liable to pay interest except in the following cases:—

(a) where he has actually received interest:

(b) where the breach consists in unreasonable delay in paying trust-money to the beneficiary:

(c) where the trustee ought to have received interest, but has not done so:

(d) where he may be fairly presumed to have received interest

He is liable in case (a), to account for the interest actually received, and, in cases (b), (c) and (d), to account for simple interest at the rate of six per cent. per annum, unless the Court otherwise directs.

(e) Where the breach consists in failure to invest trust-money and to accumulate the interest or dividends thereon, he is liable to account for compound interest (with half-yearly rests) at the same rate.

<sup>1</sup> See now the Land Improvement Loans Act, 1883 (XIX of 1883) Printed, *infra*, p 658

*(Chapter III.—Of the Duties and Liabilities of Trustees. Sec. 24.)*

(f) Where the breach consists in the employment of trust-property or the proceeds thereof in trade or business, he is liable to account, at the option of the beneficiary, either for compound interest (with half-yearly rests) at the same rate, or for the nett profits made by such employment.

*Illustrations.*

(a) A trustee improperly leaves trust-property outstanding, and it is consequently lost. he is liable to make good the property lost, but he is not liable to pay interest thereon.

(b) A bequeaths a house to B in trust to sell it and pay the proceeds to C. B neglects to sell the house for a great length of time, whereby the house is deteriorated and its market-price falls. B is answerable to C for the loss.

(c) A trustee is guilty of unreasonable delay in investing trust-money in accordance with section 20, or in paying it to the beneficiary. The trustee is liable to pay interest thereon for the period of the delay.

(d) The duty of the trustee is to invest trust-money in any of the securities mentioned in section 20, clause (a), (b), (c) or (d). Instead of so doing, he retains the money in his hands. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, and the intermediate dividends and interest thereon.

(e) The instrument of trust directs the trustee to invest trust-money either in any such securities or on mortgage of immoveable property. The trustee does neither. He is liable for the principal money and interest.

(f) The instrument of trust directs the trustee to invest trust-money in any of such securities and to accumulate the dividends thereon. The trustee disregards the direction. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and compound interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, together with the amount of the accumulation which would have arisen from a proper investment of the intermediate dividends.

(g) Trust-property is invested in one of the securities mentioned in section 20, clause (a), (b), (c) or (d). The trustee sells such security for some purpose not authorized by the terms of the instrument of trust. He is liable, at the option of the beneficiary, either to replace the security with the intermediate dividends and interest thereon, or to account for the proceeds of the sale with interest thereon.

(h) The trust-property consists of land. The trustee sells the land to a purchaser for a consideration without notice of the trust. The trustee is liable, at the option of the beneficiary, to purchase other land of equal value to be settled upon the like trust, or to be charged with the proceeds of the sale with interest.

No set-off  
allowed to  
trustee.

**24** A trustee who is liable for a loss occasioned by a breach of trust in respect of one portion of the trust-property cannot set-off against his

(Chapter III.—Of the Duties and Liabilities of Trustees. Secs. 25-27.)

liability a gain which has accrued to another portion of the trust-property through another and distinct breach of trust.

25. Where a trustee succeeds another, he is not, as such, liable for the acts or defaults of his predecessor.

Non-liability  
for prede-  
cessor's de-  
fault  
Non-liability  
for co-  
trustee's de-  
fault

26. Subject to the provisions of sections 13 and 15, one trustee is not, as such, liable for a breach of trust committed by his co-trustee:

Provided that, in the absence of an express declaration to the contrary in the instrument of trust, a trustee is so liable—

(a) where he has delivered trust-property to his co-trustee without seeing to its proper application:

(b) where he allows his co-trustee to receive trust-property and fails to make due enquiry as to the co-trustee's dealings therewith, or allows him to retain it longer than the circumstances of the case reasonably require:

(c) where he becomes aware of a breach of trust committed or intended by his co-trustee, and either actively conceals it or does not within a reasonable time take proper steps to protect the beneficiary's interest.

A co-trustee who joins in signing a receipt for trust-property and proves that he has not received the same is not answerable, by reason of such signature only, for loss or misapplication of the property by his co-trustee.

Joining in  
receipt for  
conformity.

#### Illustration

A bequeaths certain property to B and C, and directs them to sell it and invest the proceeds for the benefit of D. B and C accordingly sell the property, and the purchase-money is received by B and retained in his hands. C pays no attention to the matter for two years, and then calls on B to make the investment. B is unable to do so, becomes insolvent, and the purchase-money is lost. C may be compelled to make good the amount.

27. Where co-trustees jointly commit a breach of trust, or where one of them by his neglect enables the other to commit a breach of trust, each is liable to the beneficiary for the whole of the loss occasioned by such breach.

Several liabi-  
lity of co-  
trustees.

But as between the trustees themselves, if one be less guilty than another and has had to refund the loss, the former may compel the latter, or his legal representative to the extent of the assets he has received, to make good such loss; and if all be equally guilty, any one or more of the trustee who has had to refund the loss may compel the others to contribute.

Contribution  
as between  
co-trustees.

(Chapter III.—Of the Duties and Liabilities of Trustees. Secs 28-30.  
Chapter IV.—Of the Rights and Powers of Trustees. Secs. 31-32.)

Nothing in this section shall be deemed to authorize a trustee who has been guilty of fraud to institute a suit to compel contribution.

Non-liability  
of trustee  
paying with-  
out notice of  
transfer by  
beneficiary

28. When any beneficiary's interest becomes vested in another person, and the trustee, not having notice of the vesting, pays or delivers trust-property to the person who would have been entitled thereto in the absence of such vesting, the trustee is not liable for the property so paid or delivered.

Liability of  
trustee where  
beneficiary's  
interest is  
forfeited to  
Government.

29. When the beneficiary's interest is forfeited or awarded by legal adjudication to Government, the trustee is bound to hold the trust-property to the extent of such interest for the benefit of such person in such manner as the Government may direct in this behalf.

Indemnity  
of trustees.

30. Subject to the provisions of the instrument of trust and of sections 23 and 26, trustee shall be respectively chargeable only for such moneys, stocks, funds and securities as they respectively actually receive and shall not be answerable the one for the other of them, nor for any banker, broker or other person in whose hands any trust-property may be placed, nor for the insufficiency or deficiency of any stocks, funds or securities, nor otherwise for involuntary losses

## CHAPTER IV.

### OF THE RIGHTS AND POWERS OF TRUSTEES

Right to  
title-deed.

31. A trustee is entitled to have in his possession the instrument of trust and all the documents of title (if any) relating solely to the trust-property.

Right to re-  
imbursement  
of expenses

32. Every trustee may reimburse himself, or pay or discharge out of the trust-property, all expenses properly incurred in or about the execution of the trust, or the realization, preservation or benefit of the trust-property, or the protection or support of the beneficiary.

If he pays such expenses out of his own pocket, he has a first charge upon the trust-property for such expenses and interest thereon; but such charge (unless the expenses have been incurred with the sanction of a principal Civil Court of original jurisdiction) shall be enforced only by prohibiting any disposition of the trust-property without previous payment of such expenses and interest.

*(Chapter IV.—Of the Rights and Powers of Trustees. Secs. 33-36.)*

If the trust-property fail, the trustee is entitled to recover from the beneficiary personally on whose behalf he acted, and at whose request, expressed or implied, he made the payment, the amount of such expenses.

Where a trustee has by mistake made an over-payment to the beneficiary, he may reimburse the trust-property out of the beneficiary's interest. If such interest fail, the trustee is entitled to recover from the beneficiary personally the amount of such over-payment.

Right to be recouped for erroneous over-payment.

33. A person other than a trustee who has gained an advantage from a breach of trust must indemnify the trustee to the extent of the amount actually received by such person under the breach; and where he is a beneficiary the trustee has a charge on his interest for such amount.

Right to indemnity from gainer by breach of trust.

Nothing in this section shall be deemed to entitle a trustee to be indemnified who has, in committing the breach of trust, been guilty of fraud.

34. Any trustee may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for its opinion, advice or direction on any present questions respecting the management or administration of the trust-property other than questions of detail, difficulty or importance, not proper in the opinion of the Court for summary disposal.

Right to apply to Court for opinion in management of trust-property

A copy of such petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

The trustee stating in good faith the facts in such petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee in the subject-matter of the application.

The costs of every application under this section shall be in the discretion of the Court to which it is made

35. When the duties of a trustee, as such, are completed, he is entitled to have the accounts of his administration of the trust-property examined and settled, and, where nothing is due to the beneficiary under the trust, to an acknowledgment in writing to that effect

Right to settlement of accounts.

36. In addition to the powers expressly conferred by this Act and by the instrument of trust, and subject to the restrictions, if any, contained in such instrument, and to the provisions of section 17, a trustee may do all acts which are reasonable and proper for the realiza-

General authority of trustee.

## (Chapter IV.—Of the Rights and Powers of Trustees Secs 37-40.)

tion, protection or benefit of the trust-property, and for the protection or support of a beneficiary who is not competent to contract

\* \* \* \* \*

Except with the permission of a principal Civil Court of original jurisdiction, no trustee shall lease trust-property for a term exceeding twenty-one years from the date of executing the lease, nor without reserving the best yearly rent that can be reasonably obtained.

Power to sell in lots, and either by public auction or private contract

37. Where the trustee is empowered to sell any trust-property, he may sell the same subject to prior charges or not, and either together or in lots, by public auction or private contract, and either at one time or at several times, unless the instrument of trust otherwise directs

Power to sell under special conditions

38. The trustee making any such sale may insert such reasonable stipulations either as to title or evidence of title, or otherwise, in any conditions of sale or contract for sale, as he thinks fit; and may also buy-in the property or any part thereof at any sale by auction, and rescind or vary any contract for sale, and re-sell the property so bought in, or as to which the contract is so rescinded, without being responsible to the beneficiary for any loss occasioned thereby

Time allowed for selling trust-property.

Where a trustee is directed to sell trust-property or to invest trust-money in the purchase of property, he may exercise a reasonable discretion as to the time of effecting the sale or purchase.

## Illustrations

(a) A bequeaths property to B, directing him to sell it with all convenient speed and pay the proceeds to C. This does not render an immediate sale imperative.

(b) A bequeaths property to B, directing him to sell it at such time and in such manner as he shall think fit and invest the proceeds for the benefit of C. This does not authorize B, as between him and C, to postpone the sale to an indefinite period.

Power to convey

39. For the purpose of completing any such sale, the trustee shall have power to convey or otherwise dispose of the property sold in such manner as may be necessary.

Power to vary investments.

40. A trustee may, at his discretion, call in any trust-property invested in any security and invest the same on any of the securities mentioned or referred to in section 20, and from time to time vary any such investments for others of the same nature:

<sup>1</sup> The second paragraph of this section was repealed by the Repealing and Amending Act, 1891 (XII of 1891). See the First Schedule. That paragraph ran as follows —

“Every trustee in the actual possession or receipt of the rents and profits of land, as defined in the Land Improvement Act, 1871, shall, for the purposes of that Act, be deemed to be a landlord in possession.” For Act XII of 1891, see now, General Acts, Vol VI, Ed. 1898.

*(Chapter IV.—Of the Rights and Powers of Trustees. Secs. 41-43.)*

Provided that, where there is a person competent to contract and entitled at the time to receive the income of the trust-property for his life, or for any greater estate, no such change of investment shall be made without his consent in writing.

41. Where any property is held by a trustee in trust for a minor, such trustee may, at his discretion, pay to the guardians (if any) of such minor, or otherwise apply for or towards his maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral, the whole or any part of the income to which he may be entitled in respect of such property; and such trustee shall accumulate all the residue of such income by way of compound interest, by investing the same and the resulting income thereof from time to time in any of the securities mentioned or referred to in section 20, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations have arisen. Provided that such trustee may, at any time, if he thinks fit, apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.

Power to  
apply pro-  
perty of  
minors, &c.,  
for their  
maintenance,  
&c.

Where the income of the trust-property is insufficient for the minor's maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral, the trustee may, with the permission of a principal Civil Court of original jurisdiction, but not otherwise, apply the whole or any part of such property for or towards such maintenance, education, advancement or expenses.

Nothing in this section shall be deemed to affect the provisions of any local law for the time being in force relating to the persons and property of minors.

42. Any trustees or trustee may give a receipt in writing for any money, securities or other moveable property payable, transferable or deliverable to them or him by reason, or in the exercise, of any trust or power, and, in the absence of fraud, such receipt shall discharge the person paying, transferring or delivering the same therefrom, and from seeing to the application thereof, or being accountable for any loss or misapplication thereof.

Power to  
give receipts.

43. Two or more trustees acting together may, if and as they think fit—

Power to  
compound,  
&c.

- (a) accept any composition or any security for any debt or for any property claimed;
- (b) allow any time for payment of any debt;

(Chapter IV.—Of the Right and Powers of Trustees Secs 44-45 Chapter V —Of the Disabilities of Trustees Secs. 46-47.)

- (c) compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the trust; and,
- (d) for any of those purposes, enter into, give, execute and do such agreements, instruments of composition or arrangement, releases and other things as to them seem expedient, without being responsible for any loss occasioned by any act or thing so done by them in good faith.

The powers conferred by this section on two or more trustees acting together may be exercised by a sole acting trustee when by the instrument of trust, if any, a sole trustee is authorized to execute the trusts and powers thereof.

This section applies only if and as far as a contrary intention is not expressed in the instrument of trust, if any, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

This section applies only to trusts created after this Act comes into force

Power to  
several trus-  
tees of whom  
one disclaims  
or dies

44. When an authority to deal with the trust-property is given to several trustees and one of them disclaims or dies, the authority may be exercised by the continuing trustees, unless from the terms of the instrument of trust it is apparent that the authority is to be exercised by a number in excess of the number of the remaining trustees.

Suspension of  
trustee's  
powers by  
decree.

45. Where a decree has been made in a suit for the execution of a trust, the trustee must not exercise any of his powers except in conformity with such decree, or with the sanction of the Court by which the decree has been made, or, where an appeal against the decree is pending, of the Appellate Court.

## CHAPTER V

### OF THE DISABILITIES OF TRUSTEES.

Trustee can-  
not renounce  
after accept-  
ance.

46. A trustee who has accepted the trust cannot afterwards renounce it except (a) with the permission of a principal Civil Court of original jurisdiction, or (b), if the beneficiary is competent to contract, with his consent, or (c) by virtue of a special power in the instrument of trust

Trustee can-  
not delegate.

47. A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless (a) the instrument of trust so provides, or (b) the delegation is in the regular course of business, or (c) the delegation

*(Chapter V.—Of the Disabilities of Trustees. Secs. 48-53.)*

is necessary, or (d) the beneficiary, being competent to contract, consents to the delegation

*Explanation*—The appointment of an attorney or proxy to do an act merely ministerial and involving no independent discretion is not a delegation within the meaning of this section.

*Illustrations.*

(a) A bequeaths certain property to B and C on certain trusts to be executed by them or the survivor of them or the assigns of such survivor. B dies C may bequeath the trust-property to D and E upon the trusts of A's will

(b) A is a trustee of certain property with power to sell the same. A may employ an auctioneer to effect the sale.

(c) A bequeaths to B fifty houses let at monthly rents in trust to collect the rents and pay them to C. B may employ a proper person to collect these rents

48. When there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides.

Co-trustees cannot act singly.

49. Where a discretionary power conferred on a trustee is not exercised reasonably and in good faith, such power may be controlled by a principal Civil Court of original jurisdiction.

Control of discretionary power

50. In the absence of express directions to the contrary contained in the instrument of trust or of a contract to the contrary entered into with the beneficiary or the Court at the time of accepting the trust, a trustee has no right to remuneration for his trouble, skill and loss of time in executing the trust.

Trustee may not charge for services.

Nothing in this section applies to any Official Trustee, Administrator General, Public Curator or person holding a certificate of administration.

51. A trustee may not use or deal with the trust-property, for his own profit or for any other purpose unconnected with the trust.

Trustee may not use trust-property for his own profit.

52. No trustee whose duty it is to sell trust-property, and no agent employed by such trustee for the purpose of the sale, may, directly or indirectly, buy the same or any interest therein, on his own account or as agent for a third person.

Trustee for sale or his agent may not buy.

53. No trustee, and no person who has recently ceased to be a trustee, may, without the permission of a principal Civil Court of original jurisdiction, buy or become mortgagee or lessee of the trust-property or any part thereof; and such permission shall not be given unless the proposed purchase, mortgage or lease is manifestly for the advantage of the beneficiary.

Trustee may not buy beneficiary's interest without permission.

(Chapter V.—Of the Disabilities of Trustees. Sec. 54. Chapter VI.—  
Of the Rights and Liabilities of the Beneficiary. Secs 55-57.)

Trustee for  
purchase.

And no trustee whose duty it is to buy or to obtain a mortgage or lease of particular property for the beneficiary may buy it, or any part thereof, or obtain a mortgage or lease of it, or any part thereof, for himself.

Co-trustees  
may not lend  
to one of  
themselves

54. A trustee or co-trustee whose duty it is to invest trust-money on mortgage or personal security must not invest it on a mortgage by, or on the personal security of, himself or one of his co-trustees

## CHAPTER VI

### OF THE RIGHTS AND LIABILITIES OF THE BENEFICIARY.

Rights to  
rents and  
profits

55. The beneficiary has, subject to the provisions of the instrument of trust, a right to the rents and profits of the trust-property

Right to  
specific  
execution.

56. The beneficiary is entitled to have the intention of the author of the trust specifically executed to the extent of the beneficiary's interest;

Right to  
transfer of  
possession.

and, where there is only one beneficiary and he is competent to contract, or where there are several beneficiaries and they are competent to contract and all of one mind, he or they may require the trustee to transfer the trust-property to him or them, or to such person as he or they may direct.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in the second clause of this section applies to such property during her marriage.

### Illustrations

(a) Certain Government securities are given to trustees upon trust to accumulate the interest until A attains the age of 24, and then to transfer the gross amount to him. A on attaining majority may, as the person exclusively interested in the trust-property, require the trustees to transfer it immediately to him.

(b) A bequeaths Rs 10,000 to trustees upon trust to purchase an annuity for B, who has attained his majority and is otherwise competent to contract. B may claim the Rs. 10,000

(c) A transfers certain property to B and directs him to sell or invest it for the benefit of C, who is competent to contract. C may elect to take the property in its original character

Right to  
inspect and  
take copies  
of instru-

57. The beneficiary has a right, as against the trustee and all persons claiming under him with notice of trust, to inspect and take copies of the instrument of trust, the documents of title relating solely to the trust-

(Chapter VI.—Of the Rights and Liabilities of the Beneficiary.  
Secs 58-60.)

property, the accounts of the trust-property and the vouchers (if any) by which they are supported, and the cases submitted and opinions taken by the trustee for his guidance in the discharge of his duty

ment of  
trust, ac-  
counts, &c

58. The beneficiary, if competent to contract, may transfer his interest, but subject to the law for the time being in force as to the circumstances and extent in and to which he may dispose of such interest:

Right to  
transfer  
beneficial  
interest

Provided that when property is transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section shall authorize her to transfer such interest during her marriage.

59. When no trustees are appointed or all the trustees die, disclaim or are discharged, or where for any other reason the execution of a trust by the trustee is or becomes impracticable, the beneficiary may institute a suit for the execution of the trust, and the trust shall, so far as may be possible, be executed by the Court until the appointment of a trustee or new trustee

Right to sue  
for execution  
of trust

60. The beneficiary has a right (subject to the provisions of the instrument of trust) that the trust property shall be properly protected and held and administered by proper persons and by a proper number of such persons.

Right to  
proper  
trustees

*Explanation I.*—The following are not proper persons within the meaning of this section:—

A person domiciled abroad: an alien enemy: a person having an interest inconsistent with that of the beneficiary: a person in insolvent circumstances, and, unless the personal law of the beneficiary allows otherwise, a married woman and a minor.

*Explanation II.*—When the administration of the trust involves the receipt and custody of money, the number of trustees should be two at least

*Illustrations*

(a) A, one of several beneficiaries, proves that B, the trustee, has improperly disposed of part of the trust-property, or that the property is in danger from B's being in insolvent circumstances, or that he is incapacitated from acting as trustee. A may obtain a receiver of the trust-property

(b) A bequeaths certain jewels to B in trust for C. B dies during A's lifetime; then A dies. C is entitled to have the property conveyed to a trustee for him.

(c) A conveys certain property to four trustees in trust for B. Three of the trustees die. B may institute a suit to have three new trustees appointed in the place of the deceased trustees

## (Chapter VI.—Of the Rights and Liabilities of the Beneficiary. Secs. 61-62)

(d) A conveys certain property to three trustees in trust for B. All the trustees disclaim. B may institute a suit to have three trustees appointed in place of the trustees so disclaiming.

(e) A, a trustee for B, refuses to act, or goes to reside permanently out of British India, or is declared an insolvent, or compounds with his creditors, or suffers a co-trustee to commit a breach of trust. B may institute a suit to have A removed and a new trustee appointed in his room.

Right to  
compel to  
any act of  
duty

61. The beneficiary has a right that his trustee shall be compelled to perform any particular act of his duty as such, and restrained from committing any contemplated or probable breach of trust.

*Illustrations*

(a) A contracts with B to pay him monthly Rs. 100 for the benefit of C. B writes and signs a letter declaring that he will hold in trust for C the money so to be paid. A fails to pay the money in accordance with his contract. C may compel B on a proper indemnity to allow C to sue on the contract in B's name.

(b) A is trustee of certain land, with a power to sell the same and pay the proceeds to B and C equally. A is about to make an improvident sale of the land. B may sue on behalf of himself and C for an injunction to restrain A from making the sale.

Wrongful  
purchase by  
trustee

62. Where a trustee has wrongfully bought trust-property, the beneficiary has a right to have the property declared subject to the trust or retransferred by the trustee, if it remains in his hands unsold, or, if it has been bought from him by any person with notice of the trust, by such person. But in such case the beneficiary must repay the purchase-money paid by the trustee, with interest, and such other expenses (if any) as he has properly incurred in the preservation of the property; and the trustee or purchaser must (a) account for the nett profits of the property, (b) be charged with an occupation-rent, if he has been in actual possession of the property, and (c) allow the beneficiary to deduct a proportionate part of the purchase-money if the property has been deteriorated by the acts or omissions of the trustee or purchaser.

Nothing in this section—

(a) impairs the rights of lessees and others who, before the institution of a suit to have the property declared subject to the trust or retransferred, have contracted in good faith with the trustee or purchaser; or

(b) entitles the beneficiary to have the property declared subject to the trustee or retransferred where he, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, ratified the sale to the trustee with

full knowledge of the facts of the case and of his rights as against the trustee.

63. Where trust-property comes into the hands of a third person inconsistently with the trust, the beneficiary may require him to admit formally, or may institute a suit for a declaration, that the property is comprised in the trust.

Following trust-property—into the hands of third persons; into that into which it has been converted.

Where the trustee has disposed of trust-property and the money or other property which he has received therefor can be traced in his hands, or the hands of his legal representative or legatee, the beneficiary has, in respect thereof, rights as nearly as may be the same as his rights in respect of the original trust-property.

#### Illustrations.

(a) A, a trustee for B of Rs 10,000, wrongfully invests the Rs. 10,000 in the purchase of certain land B is entitled to the land.

(b) A, a trustee, wrongfully purchases land in his own name, partly with his own money, partly with money subject to a trust for B B is entitled to a charge on the land for the amount of the trust-money so misemployed.

64. Nothing in section 63 entitles the beneficiary to any right in respect of property in the hands of—

Saving of rights of certain transferees.

(a) a transferee in good faith for consideration without having notice of the trust, either when the purchase-money was paid, or when the conveyance was executed, or—

(b) a transferee for consideration from such a transferee.

A judgment-creditor of the trustee attaching and purchasing trust-property is not a transferee for consideration within the meaning of this section.

Nothing in section 63 applies to money, currency notes, and negotiable instruments in the hands of a *bonâ fide* holder to whom they have passed in circulation, or shall be deemed to affect the Indian Contract Act, 1872<sup>1</sup>, section 108, or the liability of a person to whom a debt or charge is transferred.

IX of 1872

65. Where a trustee wrongfully sells or otherwise transfers trust-property and afterwards himself becomes the owner of the property, the property again becomes subject to the trust, notwithstanding any want of notice on the part of intervening transferees in good faith for consideration

Acquisition by trustee of trust-property wrongfully converted.

66. Where the trustee wrongfully mingles the trust-property with his own, the beneficiary is entitled to a charge on the whole fund for the amount due to him.

Right in case of blended property

<sup>1</sup> Printed, General Acts, Vol. II, Ed 1898, p 299.

Wrongful employment by partner-trustee of trust-property for partnership purposes.

67. If a partner, being a trustee, wrongfully employs trust-property in the business, or on the account of the partnership, no other partner is liable therefor in his personal capacity to the beneficiaries, unless he had notice of the breach of trust.

The partners having such notice are jointly and severally liable for the breach of trust

#### Illustrations

(a) A and B are partners. A dies, having bequeathed all his property to B in trust for Z, and appointed B his sole executor. B, instead of winding-up the affairs of the partnership, retains all the assets in the business. Z may compel him, as partner, to account for so much of the profits as are derived from A's share of the capital. B is also answerable to Z for the improper employment of A's assets.

(b) A, a trader, bequeaths his property to B in trust for C, appoints B his sole executor, and dies. B enters into partnership with X and Y in the same trade, and employs A's assets in the partnership-business. B gives an indemnity to X and Y against the claims of C. Here X and Y are jointly liable with B to C as having knowingly become parties to the breach of trust committed by B.

Liability of beneficiary joining in breach of trust.

68. Where one of several beneficiaries—

- (a) joins in committing breach of trust, or
- (b) knowingly obtains any advantage therefrom, without the consent of the other beneficiaries, or
- (c) becomes aware of a breach of trust committed or intended to be committed, and either actually conceals it, or does not within a reasonable time take proper steps to protect the interests of the other beneficiaries, or
- (d) has deceived the trustee and thereby induced him to commit a breach of trust,

the other beneficiaries are entitled to have all his beneficial interest impounded as against him and all who claim under him (otherwise than as transferees for consideration without notice of the breach) until the loss caused by the breach has been compensated.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section applies to such property during her marriage.

Rights and liabilities of beneficiary's transferee.

69. Every person to whom a beneficiary transfers his interests has the rights, and is subject to the liabilities, of the beneficiary in respect of such interest at the date of the transfer.

## CHAPTER VII

## OF VACATING THE OFFICE OF TRUSTEE

70. The office of a trustee is vacated by his death or by his discharge from his office. Office how vacated

71. A trustee may be discharged from his office only as follows:— Discharge of trustee

- (a) by the extinction of the trust;
- (b) by the completion of his duties under the trust;
- (c) by such means as may be prescribed by the instrument of trust;
- (d) by appointment under this Act of a new trustee in his place;
- (e) by consent of himself and the beneficiary, or, where there are more beneficiaries than one, all the beneficiaries being competent to contract, or
- (f) by the Court to which a petition for his discharge is presented under this Act.

72. Notwithstanding the provisions of section 11, every trustee may apply by petition to a principal Civil Court of original jurisdiction to be discharged from his office; and, if the Court finds that there is sufficient reason for such discharge, it may discharge him accordingly, and direct his cost to be paid out of the trust-property. But, where there is no such reason, the Court shall not discharge him, unless a proper person can be found to take his place. Petition to be discharged from trust

73. Whenever any person appointed a trustee disclaims, or any trustee, either original or substituted, dies, or is for a continuous period of six months absent from British India, or leaves British India for the purpose of residing abroad, or is declared an insolvent, or desires to be discharged from the trust, or refuses or becomes, in the opinion of a principal Civil Court of original jurisdiction, unfit or personally incapable to act in the trust, or accepts an inconsistent trust, a new trustee may be appointed in his place by— Appointment of new trustees on death, &c.

- (a) the person nominated for that purpose by the instrument of trust (if any), or
- (b) if there be no such person, or no such person able and willing to act, the author of the trust if he be alive and competent to contract, or the surviving or continuing trustees or trustee for the time being, or legal representative of the last surviving and continuing trustee, or (with the consent of the Court) the retiring trustees, if they all retire simultaneously, or (with the like consent) the last retiring trustee

*(Chapter VII.—Of Vacating the Office of Trustee. Secs 74-76.)*

Every such appointment shall be by writing under the hand of the person making it.

On an appointment of a new trustee the number of trustees may be increased

The official Trustee may, with his consent and by the order of the Court, be appointed under this section, in any case in which only one trustee is to be appointed, and such trustee is to be the sole trustee

The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of the power.

**Appointment  
by Court.**

74. Whenever any such vacancy or disqualification occurs and it is found impracticable to appoint a new trustee under section 73, the beneficiary may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for the appointment of a trustee or a new trustee, and the Court may appoint a trustee or a new trustee accordingly.

**Rules for  
selecting new  
trustees**

In appointing new trustees, the Court shall have regard (a) to the wishes of the author of the trust as expressed in or to be inferred from the instrument of trust; (b) to the wishes of the person, if any, empowered to appoint new trustees; (c) to the question whether the appointment will promote or impede the execution of the trust, and (d), where there are more beneficiaries than one, to the interests of all such beneficiaries.

**Vesting of  
trust-pro-  
perty in new  
trustees**

75. Whenever any new trustee is appointed under section 73 or section 74, all the trust-property for the time being vested in the surviving or continuing trustees or trustee, or in the legal representative of any trustee, shall become vested in such new trustee either solely or jointly with the surviving or continuing trustees or trustee, as the case may require.

**Powers of  
new trustees**

Every new trustee so appointed, and every trustee appointed by a Court either before or after the passing of this Act, shall have the same powers, authorities and discretions, and shall in all respects act, as if he had been originally nominated a trustee by the author of the trust.

**Survival of  
trust.**

76. On the death or discharge of one of several co-trustees, the trust survives and the trust-property passes to the others, unless the instrument of trust expressly declares otherwise.

(Chapter VIII—Of the Extinction of Trusts. Secs 77-79 Chapter IX—Of certain Obligations in the Nature of Trusts. Secs 80-81.)

## CHAPTER VIII

### OF THE EXTINCTION OF TRUSTS.

77. A trust is extinguished—

Trust how  
extinguished.

- (a) when its purpose is completely fulfilled, or
- (b) when its purpose becomes unlawful, or
- (c) when the fulfilment of its purpose becomes impossible by destruction of the trust-property or otherwise; or
- (d) when the trust, being revocable, is expressly revoked.

78. A trust created by will may be revoked at the pleasure of the testator.

Revocation of  
trust.

A trust otherwise created can be revoked only—

- (a) where all the beneficiaries are competent to contract— by their consent;
- (b) where the trust has been declared by a non-testamentary instrument or by word of mouth—in exercise of a power of revocation expressly reserved to the author of the trust; or
- (c) where the trust is for the payment of the debts of the author of the trust, and has not been communicated to the creditors—at the pleasure of the author of the trust

### Illustration

A conveys property to B in trust to sell the same and pay out of the proceeds the claims of A's creditors. A reserves no power of revocation. If no communication has been made to the creditors, A may revoke the trust. But if the creditors are parties to the arrangement, the trust cannot be revoked without their consent.

79. No trust can be revoked by the author of the trust so as to defeat or prejudice what the trustees may have duly done in execution of the trust.

Revocation  
not to defeat  
what trustees  
have duly  
done

## CHAPTER IX.

### OF CERTAIN OBLIGATIONS IN THE NATURE OF TRUSTS

80. An obligation in the nature of a trust is created in the following cases.

Where obli-  
gation in  
nature of  
trust is  
created

81. Where the owner of property transfers or bequeaths it and it cannot be inferred consistently with the attendant circumstances that he intended to dispose of the beneficial interest therein, the transferee or legatee must hold such property for the benefit of the owner or his legal representative.

Where it  
does not ap-  
pear that  
transferor in-  
tended to  
dispose of  
beneficial  
interest.

(Chapter IX.—Of certain Obligations in the Nature of Trusts  
Secs. 82-83)

Illustrations

(a) A conveys land to B without consideration and declares no trust of any part. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the land. B holds the land for the benefit of A.

(b) A conveys to B two fields, Y and Z, and declares a trust of Y, but says nothing about Z. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in Z. B holds Z for the benefit of A.

(c) A transfers certain stock belonging to him into the joint names of himself and B. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the stock during his life. A and B hold the stock for the benefit of A during his life.

(d) A makes a gift of certain land to his wife B. She takes the beneficial interest in the land free from any trust in favour of A, for it may be inferred from the circumstances that the gift was for B's benefit.

Transfer to one for consideration paid by another.

82. Where property is transferred to one person for a consideration paid or provided by another person, and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration.

Nothing in this section shall be deemed to affect the Code of Civil Procedure<sup>1</sup>, section 317, or Act No. XI of 1859 (*to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency*)<sup>2</sup>, section 36.

Trust incapable of execution or executed without exhausting trust-property.

83. Where a trust is incapable of being executed, or where the trust is completely executed without exhausting the trust-property, the trustee, in the absence of a direction to the contrary, must hold the trust-property, or so much thereof as is unexhausted, for the benefit of the author of the trust or his legal representative.

Illustrations

(a) A conveys certain land to B—

“upon trust,” and no trust is declared, or

“upon trust to be thereafter declared,” and no such declaration is ever made, or

upon trusts that are too vague to be executed, or

upon trusts that become incapable of taking effect, or

“in trust for C,” and C renounces his interest under the trust.

In each of these cases B holds the land for the benefit of A.

<sup>1</sup> See now Act XIV of 1882, printed, *infra*, p. 262.

<sup>2</sup> Printed, Bengal Code, Vol. I, Ed. 1889, p. 391.

(Chapter IX.—Of certain Obligations in the Nature of Trusts.  
Secs 84-88)

(b) A transfers Rs. 10,000 in the four per cents to B, in trust to pay the interest annually accruing due to C for her life A dies. Then C dies B holds the fund for the benefit of A's legal representative.

(c) A conveys land to B upon trust to sell it and apply one moiety of the proceeds for certain charitable purposes, and the other for the maintenance of the worship of an idol B sells the land, but the charitable purposes wholly fail, and the maintenance of the worship does not exhaust the second moiety of the proceeds B holds the first moiety and the part unapplied of the second moiety for the benefit of A or his legal representative

(d) A bequeaths Rs 10,000 to B, to be laid out in buying land to be conveyed for purposes which either wholly or partially fail to take effect B holds for the benefit of A's legal representative the undisposed of interest in the money or land if purchased.

84. Where the owner of property transfers it to another for an illegal purpose and such purpose is not carried into execution, or the transferor is not as guilty as the transferee, or the effect of permitting the transferee to retain the property might be to defeat the provisions of any law, the transferee must hold the property for the benefit of the transferor.

Transfer for illegal purpose.

85. Where a testator bequeaths certain property upon trust and the purpose of the trust appears on the face of the will to be unlawful, or during the testator's lifetime the legatee agrees with him to apply the property for an unlawful purpose, the legatee must hold the property for the benefit of the testator's legal representative.

Bequest for illegal purpose.

Where property is bequeathed and the revocation of the bequest is prevented by coercion, the legatee must hold the property for the benefit of the testator's legal representative.

Bequest of which revocation is prevented by coercion. Transfer pursuant to rescindable contract.

86. Where property is transferred in pursuance of a contract which is liable to rescission or induced by fraud or mistake, the transferee must, on receiving notice to that effect, hold the property for the benefit of the transferor, subject to repayment by the latter of the consideration actually paid.

87. Where a debtor becomes the executor or other legal representative of his creditor, he must hold the debt for the benefit of the persons interested therein.

Debtor becoming creditor's representative.

88. Where a trustee, executor, partner, agent, director of a company, legal adviser, or other person bound in a fiduciary character to protect the interests of another person, by availing himself of his character, gains for himself any pecuniary advantage, or where any person so bound enters into any dealings under circumstances in which his own interests are, or

Advantage gained by fiduciary.

*(Chapter IX.—Of certain Obligations in the Nature of Trusts.  
Secs 89-90.)*

may be, adverse to those of such other person and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained.

*Illustrations*

(a) A, an executor, buys at an undervalue from B, a legatee, his claim under the will B is ignorant of the value of the bequest A must hold for the benefit of B the difference between the price and value.

(b) A, a trustee, uses the trust-property for the purpose of his own business A holds for the benefit of his beneficiary the profits arising from such user.

(c) A, a trustee, retires from his trust in consideration of his successor paying him a sum of money A holds such money for the benefit of his beneficiary.

(d) A, a partner, buys land in his own name with funds belonging to the partnership A holds such land for the benefit of the partnership

(e) A, a partner, employed on behalf of himself and his co-partners in negotiating the terms of a lease, clandestinely stipulates with the lessor for payment to himself of a lakh of rupees A holds the lakh for the benefit of the partnership

(f) A and B are partners A dies B, instead of winding-up the affairs of the partnership, retains all the assets in the business B must account to A's legal representative for the profits arising from A's share of the capital

(g) A, an agent employed to obtain a lease for B, obtains the lease for himself A holds the lease for the benefit of B.

(h) A, a guardian, buys up for himself incumbrances on his ward B's estate at an undervalue A holds for the benefit of B the incumbrances so bought, and can only charge him with what he has actually paid.

Advantage  
gained by  
exercise of  
undue influ-  
ence

89. Where, by the exercise of undue influence, any advantage is gained in derogation of the interests of another, the person gaining such advantage without consideration, or with notice that such influence has been exercised, must hold the advantage for the benefit of the person whose interests have been so prejudiced.

Advantage  
gained by  
qualified  
owner.

90. Where a tenant for life, co-owner, mortgagee, or other qualified owner of any property, by availing himself of his position as such, gains an advantage of derogation of the rights of the other persons interested in the property, or where any such owner, as representing all persons interested in such property, gains any advantage, he must hold, for the benefit of all persons so interested, the advantage so gained, but subject to repayment by such persons of their due share of the expenses properly incurred, and to an indemnity by the same persons against liabilities properly contracted, in gaining such advantage.

*Illustrations*

(a) A, the tenant for life of leasehold property, renews the lease in his own

*(Chapter IX.—Of certain Obligations in the Nature of Trusts.  
Secs. 91-95 )*

name and for his own benefit A holds the renewed lease for the benefit of all those interested in the old lease

(b) A village belongs to a Hindú family A, one of its members, pays nazarána to Government and thereby procures his name to be entered as the mámdár of the village. A holds the village for the benefit of himself and the other members

(c) A mortgages land to B, who enters into possession. B allows the Government revenue to fall into arrear with a view to the land being put up for sale and his becoming himself the purchaser of it The land is accordingly sold to B Subject to the repayment of the amount due on the mortgage and of his expenses properly incurred as mortgagee, B holds the land for the benefit of A

91. Where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract.

Property acquired with notice of existing contract.

92. Where a person contracts to buy property to be held on trust for certain beneficiaries and buys the property accordingly, he must hold the property for their benefit to the extent necessary to give effect to the contract.

Purchase by person contracting to buy property to be held on trust.

93. Where creditors compound the debts due to them, and one of such creditors, by a secret arrangement with the debtor, gains an undue advantage over his co-creditors, he must hold for the benefit of such creditors the advantage so gained.

Advantage secretly gained by one of several compounding creditors

94. In any case not coming within the scope of any of the preceding sections, where there is no trust, but the person having possession of property has not the whole beneficial interest therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof (as the case may be), to the extent necessary to satisfy their just demands.

Constructive trusts in cases not expressly provided for.

*Illustrations.*

(a) A, an executor, distributes the assets of his testator B to the legatees without having paid the whole of B's debts. The legatees hold for the benefit of B's creditors, to the extent necessary to satisfy their just demands, the assets so distributed

(b) A by mistake assumes the character of a trustee for B, and under colour of the trust receives certain money. B may compel him to account for such moneys

(c) A makes a gift of a lách of rupees to B, reserving to himself, with B's assent, power to revoke at pleasure the gift as to Rs 10,000. The gift is void as to Rs 10,000, and B holds that sum for the benefit of A

95. The person holding property in accordance with any of the preceding sections of this Chapter must, so far as may be, perform the

Obligor's duties, liabilities.

(Chapter IX.—Of certain Obligations in the Nature of Trusts.  
Sec. 96. The Schedule.)

ties and  
disabilities.

same duties, and is subject, so far as may be, to the same liabilities and disabilities, as if he were a trustee of the property for the person for whose benefit he holds it:

Provided that (a) where he rightfully cultivates the property or employs it in trade or business, he is entitled to reasonable remuneration for his trouble, skill and loss of time in such cultivation or employment; and (b) where he holds the property by virtue of a contract with a person for whose benefit he holds it, or with any one through whom such person claims, he may, without the permission of the Court, buy or become lessee or mortgagee of the property or any part thereof.

Saving of  
rights of  
bonâ fide  
purchasers

96. Nothing contained in this Chapter shall impair the rights of transferees in good faith for consideration, or create an obligation in evasion of any law for the time being in force.

## THE SCHEDULE.

### STATUTE.

Year and Chapter.	Short title	Extent of repeal.
29 Car. II, c. 3	The Statute of Frauds	Sections 7, 8, 9, 10 and 11.

### ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
XXVIII of 1866	The Trustees' and Mortgagees' Powers Act, 1866.	Sections 2, 3, 4, 5, 32, 33, 34, 35, 36 and 37. In section * * 1 43 the word "trustee" wherever it occurs; and in section 43 the words "management or" and "the trust-property or."
I of 1877	The Specific Relief Act, 1877	In section 12 the first illustration

<sup>1</sup> The figures "39" and by implication the word "and", also, were repealed by the Repealing and Amending Act, 1891 (XII of 1891), see the First Schedule.

## THE TRANSFER OF PROPERTY ACT, 1882.

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CONTENTS.

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## PREAMBLE.

## CHAPTER I.

## PRELIMINARY.

## SECTIONS.

1. Short title.  
Commencement.  
Extent
2. Repeal of Acts  
Saving of certain enactments, incidents, rights, liabilities, etc.
3. Interpretation-clause.
4. Enactments relating to contracts to be taken as part of Contract Act.

---

CHAPTER II.

## OF TRANSFERS OF PROPERTY BY ACT OF PARTIES.

*(a) Transfer of Property, whether moveable or immoveable.*

5. "Transfer of property" defined.
6. What may be transferred.
7. Persons competent to transfer.
8. Operation of transfer.
9. Oral transfer.
10. Condition restraining alienation.
11. Restriction repugnant to interest created.
12. Condition making interest determinable on insolvency or attempted alienation.
13. Transfer for benefit of unborn person.
14. Rule against perpetuity.
15. Transfer to class some of whom come under sections 13 and 14.
16. Transfer to take effect on failure of prior transfer.
17. Transfer in perpetuity for benefit of public.
18. Direction for accumulation.
19. Vested interest.
20. When unborn person acquires vested interest on transfer for his benefit.
21. Contingent interest.
22. Transfer to members of a class who attain a particular age.
23. Transfer contingent on happening of specified uncertain event.
24. Transfer to such of certain persons as survive at some period not specified.
25. Conditional transfer.
26. Fulfilment of condition precedent.
27. Conditional transfer to one person coupled with transfer to another on failure of prior disposition.

## SECTIONS.

- 28. Ulterior transfer conditional on happening or not happening of specified event
- 29. Fulfilment of condition subsequent
- 30. Prior disposition not affected by invalidity of ulterior disposition.
- 31. Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen.
- 32. Such condition must not be invalid.
- 33. Transfer conditional on performance of act, no time being specified for performance.
- 34. Transfer conditional on performance of act, time being specified

*Election.*

- 35. Election when necessary

*Apportionment*

- 36. Apportionment of periodical payments on determination of interest of person entitled
- 37. Apportionment of benefit of obligation on severance.

*(b) Transfer of Immoveable Property.*

- 38. Transfer by person authorized only under certain circumstances to transfer.
- 39. Transfer where third person is entitled to maintenance.
- 40. Burden of obligation imposing restriction on use of land, or of obligation annexed to ownership but not amounting to interest or easement
- 41. Transfer by ostensible owner
- 42. Transfer by person having authority to revoke former transfer
- 43. Transfer by unauthorized person who subsequently acquires interest in property transferred.
- 44. Transfer by one co-owner
- 45. Joint transfer for consideration
- 46. Transfer for consideration by persons having distinct interests.
- 47. Transfer by co-owners of share in common property
- 48. Priority of rights created by transfer.
- 49. Transferee's right under policy
- 50. Rent *bonâ fide* paid to holder under defective title.
- 51. Improvements made by *bonâ fide* holders under defective titles.
- 52. Transfer of property pending suit relating thereto.
- 53. Fraudulent transfer

## CHAPTER III

## OF SALES OF IMMOVEABLE PROPERTY.

- 54. "Sale" defined.  
Sale how made  
Contract for sale.
- 55. Rights and liabilities of buyer and seller.
- 56. Sale of one of two properties subject to a common charge.

*Discharge of Incumbrances on Sale.*

- 57. Provision by Court for incumbrances and sale freed therefrom.

## CHAPTER IV.

## OF MORTGAGES OF IMMOVEABLE PROPERTY AND CHARGES.

## SECTIONS.

58. "Mortgage," "mortgagor," "mortgagee," "mortgage-money," and "mortgage-deed" defined.  
Simple mortgage.  
Mortgage by conditional sale.  
Usufructuary mortgage.  
English mortgage.
- 59 Mortgage when to be by assurance.

*Rights and Liabilities of Mortgagor.*

60. Right of mortgagor to redeem.  
Redemption of portion of mortgaged property
61. Right to redeem one of two properties separately mortgaged.
62. Right of usufructuary mortgagor to recover possession.
63. Accession to mortgaged property.  
Accession acquired in virtue of transferred ownership.
64. Renewal of mortgaged lease
65. Implied contracts by mortgagor
66. Waste by mortgagor in possession.

*Rights and Liabilities of Mortgagee.*

67. Right to foreclosure or sale.
68. Right to sue for mortgage-money.
- 69 Power of sale when valid.
70. Accession to mortgaged property.
71. Renewal of mortgaged lease
72. Rights of mortgagee in possession
73. Charge on proceeds of revenue-sale.
74. Right of subsequent mortgagee to pay off prior mortgagee.
75. Rights of mesne mortgagee against prior and subsequent mortgagees
- 76 Liabilities of mortgagee in possession.  
Loss occasioned by his default.
77. Receipts in lieu of interest

*Priority*

78. Postponement of prior mortgagee.
- 79 Mortgage to secure uncertain amount when maximum is expressed.
- 80 Tacking abolished.

*Marshalling and Contribution.*

81. Marshalling securities
- 82 Contribution to mortgage-debt.

*Deposit in Court.*

- 83 Power to deposit in Court money due on mortgage.  
Right to money deposited by mortgagor.
- 84 Cessation of interest.

*Suits for Foreclosure, Sale or Redemption.*

## SECTIONS.

85. Parties to suits for foreclosure, sale and redemption.

*Foreclosure and Sale.*

86. Decree in foreclosure-suit.

87. Procedure in case of payment of amount due.

Order absolute for foreclosure.

Power to enlarge time.

88. Decree for sale.

Power to decree sale in foreclosure-suit

89. Procedure when defendant pays amount due.

Order absolute for sale.

90. Recovery of balance due on mortgage.

*Redemption.*

91. Who may sue for redemption.

92. Decree in redemption-suit

93. In case of redemption, possession.

In default, foreclosure or sale.

Power to enlarge time

94. Costs of mortgagee subsequent to decree.

95. Charge of one of several co-mortgagors who redeems.

*Sale of Property subject to prior Mortgage.*

96. Sale of property subject to prior mortgage

97. Application of proceeds.

*Anomalous Mortgages.*

98. Mortgage not described in section 58, clauses (b), (c), (d) and (e).

*Attachment of Mortgaged Property.*

99. Attachment of mortgaged property.

*Charges.*

100. Charges.

101. Extinguishment of charges.

*Notice and Tender.*

102. Service or tender on or to agent.

103. Notice, etc., to or by person incompetent to contract.

104. Power to make rules.

## CHAPTER V.

## OF LEASES OF IMMOVEABLE PROPERTY.

105. "Lease" defined

"Lessor," "lessee," "premium" and "rent" defined.

106. Duration of certain leases in absence of written contract or local usage.

107. Leases how made

108. Rights and liabilities of lessor and lessee.

*A—Rights and Liabilities of the Lessor.*

*B—Rights and Liabilities of the Lessee.*

SECTIONS.

- 109. Rights of lessor's transferee.
- 110. Exclusion of day on which term commences  
Duration of lease for a year.  
Option to determine lease.
- 111. Determination of lease.
- 112. Waiver of forfeiture.
- 113. Waiver of notice to quit.
- 114. Relief against forfeiture for non-payment of rent.
- 115. Effect of surrender and forfeiture on under-leases
- 116. Effect of holding over.
- 117. Exemption of leases for agricultural purposes.

---

CHAPTER VI.

OF EXCHANGES.

- 118. "Exchange" defined.
- 119. Right of party deprived of thing received in exchange.
- 120. Rights and liabilities of parties.
- 121. Exchange of money.

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CHAPTER VII.

OF GIFTS.

- 122. "Gift" defined.  
Acceptance when to be made.
- 123. Transfer how effected.
- 124. Gift of existing and future property.
- 125. Gift to several, of whom one does not accept.
- 126. When gift may be suspended or revoked.
- 127. Onerous gifts.  
Onerous gift to disqualified person.
- 128. Universal donee
- 129. Saving of donations *mortis causâ* and Muhammadan law.

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CHAPTER VIII.

OF TRANSFERS OF ACTIONABLE CLAIMS.

- 130. "Actionable claim" defined.
- 131. Transfer of debts.
- 132. Notice to be in writing signed.
- 133. Debtor to give effect to transfer.
- 134. Warranty of solvency of debtor.
- 135. Discharge of person against whom claim is sold.
- 136. Incapacity of officers connected with Courts of Justice.
- 137. Liability of transferee of debt.
- 138. Mortgaged debt.
- 139. Saving of negotiable instruments.

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THE SCHEDULE.

ACT No. IV of 1882<sup>1</sup>.

[17th February, 1882.]

## An Act to amend the law relating to the Transfer of Property by Act of Parties.

Preamble

WHEREAS it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties, It is hereby enacted as follows:—

### CHAPTER I.

#### PRELIMINARY.

Short title.

1. This Act may be called the Transfer of Property Act, 1882.

Commence-  
ment.  
Extent

It shall come into force on the first day of July, 1882.

It extends in the first instance to the whole of British India<sup>2</sup>, except the territories respectively administered by the Governor of Bombay in Council, the Lieutenant-Governor of the Punjab and the Chief Commissioner of British Burma<sup>3</sup>.

But any of the said Local Governments may, from time to time, by notification in the local official Gazette, extend<sup>4</sup> this Act to the whole or any specified part of the territories under its administration.

<sup>5</sup>[And any Local Government may, with the previous sanction of the Governor General in Council from time to time, by notification in the local

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1877, Pt V, p 171, for the Preliminary Report of the Select Committee, see *ibid*, 1878, Pt V, p 48; for the Further Report of the Select Committee, see *ibid*, 1879, Pt V, p 106, for the Third Report of the Select Committee, see *ibid*, 1881, Pt V, p 395; for Proceedings in Council, see *ibid*, 1877, Supplement, p 1568, *ibid*, 1877, Supplement, p. 1690, *ibid*, 1882, Supplement, p 96; *ibid*, 1882, Supplement, p 169

<sup>2</sup> Act IV of 1882 has ceased to be in force in the Nāga Hills District, including the Mokokchang subdivision, the Dibrugarh Frontier Tract, the North Cachar Hills, the Garo hills, the Khasia and Jaintia hills and the Mikir Hills Tract, see Assam Rules Manual, Ed 1893, pp 408, 409, 1884, Pt II, pp 212 and 705, respectively

<sup>3</sup> This reference to British Burma should now be read as referring to Lower Burma—see the Upper Burma Laws Act, 1886 (XX of 1886), s 4, and now the Burma Laws Act, 1898 (XIII of 1898), by which Act XX of 1886 has been repealed. The Chief Commissioner is now Lieutenant-Governor of Burma—see Proclamation, dated 9th April, 1897, in Gazette of India, 1897, Pt I, p 261

<sup>4</sup> Act IV of 1882 has been extended (from 1st January, 1893,) to—

(i) the whole of the territories, other than the Scheduled Districts, under the administration of the Government of Bombay, see Bombay Government Gazette, 1892, Pt I, p 1071, and

(ii) the area included within the local limits of the ordinary civil jurisdiction of the Recorder of Rangoon, see Burma Gazette, 1892, Pt I, p 373

<sup>5</sup> This clause was substituted for the original clause by the Transfer of Property Act (1882) Amendment Act, 1885 (III of 1885), s I, printed, General Acts, Vol V, Ed 1896, p 3

official Gazette, exempt<sup>1</sup> either retrospectively or prospectively, any part of the territories administered by such Local Government from all or any of the following provisions, namely,—

Sections 54, paragraphs 2 and 3, 59, 107 and 123 ]

III of 1877

<sup>2</sup>[Notwithstanding anything in the foregoing part of this section, sections 54, paragraphs 2 and 3, 59, 107 and 123 shall not extend or be extended to any district or tract of country for the time being excluded from the operation of the Indian Registration Act, 1877<sup>3</sup>, under the power conferred by the first section of that Act or otherwise ]

2. In the territories to which this Act extends for the time being the enactments specified in the schedule hereto annexed shall be repealed to the extent therein mentioned But nothing herein contained shall be deemed to affect—

Repeal of Acts

- (a) the provisions of any enactment not hereby expressly repealed :
- (b) any terms or incidents of any contract or constitution of property which are consistent with the provisions of this Act, and are allowed by the law for the time being in force :
- (c) any right or liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability : or
- (d) save as provided by section 57 and Chapter IV of this Act, any transfer by operation of law or by, or in execution of, a decree or order of a Court of competent jurisdiction :

Saving of certain enactments, incidents, rights, liabilities, etc.

and nothing in the second Chapter of this Act shall be deemed to affect any rule of Hindu, Muhammadan or Buddhist law

3. In this Act, unless there is something repugnant in the subject or context,—

Interpretation-clause.

“immoveable property” does not include standing timber, growing crops or grass :

“instrument” means a non-testamentary instrument :

“registered” means registered in British India under the law<sup>4</sup> for the time being in force regulating the registration of documents :

<sup>1</sup> No such exemption has yet been made

<sup>2</sup> This clause was added by Act III of 1885, s 2, and is to be deemed to have been added from the date on which Act IV of 1882 came into force

S 54, paras two and three, and ss 59, 107 and 123 extend to every cantonment in British India—see the Cantonments Act, 1889 (XIII of 1889), s 32 (1). Printed, General Acts, Ed 1898, p 335

<sup>3</sup> Printed, General Acts, Vol III, p 41

<sup>4</sup> See the Indian Registration Act, 1877 (III of 1877), printed, General Acts, Vol III, p. 41.

(Chapter I.—Preliminary Sec. 4. Chapter II.—Of Transfers of Property by Act of Parties. Secs. 5-6)

“attached to the earth” means—

- (a) rooted in the earth, as in the case of trees and shrubs;
- (b) imbedded in the earth, as in the case of walls or buildings; or
- (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.

and a person is said to have “notice” of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent under the circumstances mentioned in the Indian Contract Act, 1872<sup>1</sup>, IX of 1872. section 229.

Enactments relating to contracts to be taken as part of Contract Act.

4. The chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872<sup>1</sup>.

IX of 1872.

<sup>2</sup> [And sections 54, paragraphs 2 and 3, 59, 107 and 123 shall be read as supplemental to the Indian Registration Act, 1877 ]

III of 1877.

## CHAPTER II<sup>3</sup>.

### OF TRANSFERS OF PROPERTY BY ACT OF PARTIES.

(a) *Transfer of Property, whether moveable or immoveable*

“Transfer of property” defined.

5. In the following sections “transfer of property” means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons; and “to transfer property” is to perform such act.

What may be transferred.

6. Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force:

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.

<sup>1</sup> Printed, General Acts, Vol II, p 299

<sup>2</sup> This portion was added by the Transfer of Property Act (1882) Amendment Act, 1885 (III of 1885), s 3, printed, General Acts, Vol V, Ed 1898, p 3

<sup>3</sup> Nothing in Chapter II is to be deemed to affect any rule of Hindu, Muhammadan or Buddhist law—see s 2, *supra*

(Chapter II.—Of Transfers of Property by Act of Parties. Secs. 7-8)

(b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.

(c) An easement cannot be transferred apart from the dominant heritage.

(d) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

(e) A mere right to sue for compensation for a fraud or for harm illegally caused cannot be transferred.

(f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.

(g) Stipends allowed to military and civil pensioners of Government and political pensions cannot be transferred.

(h) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) for an illegal purpose, or (3) to a person legally disqualified to be transferee.

<sup>1</sup>[(i) Nothing in this section shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue or the lessee of an estate under the management of a Court of Wards to assign his interest as such tenant, farmer or lessee.]

7. Every person competent to contract and entitled to transferable property, or authorized to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner allowed and prescribed by any law for the time being in force.

Persons  
competent  
to transfer.

8. Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof.

Operation  
of transfer.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

and, where the property is machinery attached to the earth, the moveable parts thereof;

and, where the property is a house, the easements annexed thereto, the

<sup>1</sup> Cl (i) was added by the Transfer of Property Act (1882) Amendment Act, 1885 (III of 1885), s 4, printed, General Acts, Vol. V, Ed. 1898, p. 3.

(Chapter II.—Of Transfers of Property by Act of Parties. Secs. 9-13.)

rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows and all other things provided for permanent use therewith,

and where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect

Oral transfer.

9. A transfer of property may be made without writing in every case in which writing is not expressly required by law.

Condition restraining alienation

10. Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him: Provided that property may be transferred to or for the benefit of a woman (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.

Restriction repugnant to interest created.

11. Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

Nothing in this section shall be deemed to affect the right to restrain, for the beneficial enjoyment of one piece of immoveable property, the enjoyment of another piece of such property, or to compel the enjoyment thereof in a particular manner.

Condition making interest determinable on insolvency or attempted alienation.

12. Where property is transferred subject to a condition or limitation making any interest therein, reserved or given to or for the benefit of any person, to cease on his becoming insolvent or endeavouring to transfer or dispose of the same, such condition or limitation is void.

Nothing in this section applies to a condition in a lease for the benefit of the lessor or those claiming under him.

Transfer for benefit of unborn person.

13. Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created

for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.

*Illustration.*

A transfers property of which he is the owner to B in trust for A and his intended wife successfully for their lives, and after the death of the survivor for the eldest son of the intended marriage for life, and after his death for A's second son. The interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A's remaining interest in the property.

14. No transfer of property can operate to create an interest which is to take effect after the lifetime of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong.

Rule against perpetuity.

15. If, on a transfer of property, an interest therein is created for the benefit of a class of persons with regard to some of whom such interest fails by reason of any of the rules contained in sections 13 and 14, such interest fails as regards the whole class.

Transfer to class some of whom come under sections 13 and 14

16. Where an interest fails by reason of any of the rules contained in sections 13, 14 and 15, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

Transfer to take effect on failure of prior transfer

17. The restrictions in sections 14, 15 and 16 shall not apply to property transferred for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind.

Transfer in perpetuity for benefit of public.

18. Where the terms of a transfer of property direct that the income arising from the property shall be accumulated, such direction shall be void, and the property shall be disposed of as if no accumulation had been directed.

Direction for accumulation

*Exception* — Where the property is immoveable, or where accumulation is directed to be made from the date of the transfer, the direction shall be valid in respect only of the income arising from the property within one year next following such date; and at the end of the year such property and income shall be disposed of respectively, as if the period during which the accumulation has been directed to be made had elapsed.

19. Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer.

Vested interest.

A vested interest is not defeated by the death of the transferee before he obtains possession.

*Explanation.*—An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person, or whereby income arising from the property is directed to be accumulated until the time of enjoyment arrives, or from a provision that if a particular event shall happen the interest shall pass to another person.

When unborn person acquires vested interest on transfer for his benefit

20. Where, on a transfer of property, an interest therein is created for the benefit of a person not then living, he acquires upon his birth, unless a contrary intention appear from the terms of the transfer, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth.

Contingent interest.

21. Where, on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest, in the former case, on the happening of the event, in the latter, when the happening of the event becomes impossible.

*Exception.*—Where, under a transfer of property, a person becomes entitled to an interest therein upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income or so much thereof as may be necessary to be applied for his benefit, such interest is not contingent.

Transfer to members of a class who attain a particular age

22. Where, on a transfer of property, an interest therein is created in favour of such members only of a class as shall attain a particular age, such interest does not vest in any member of the class who has not attained that age.

Transfer contingent on happening of specified uncertain event

23. Where, on a transfer of property, an interest therein is to accrue to a specified person if a specified uncertain event shall happen, and no time is mentioned for the occurrence of that event, the interest fails unless such event happens before, or at the same time as, the intermediate or precedent interest ceases to exist.

Transfer to such of certain

24. Where, on a transfer of property, an interest therein is to accrue to such of certain persons as shall be surviving at some period, but the exact period is not specified, the interest shall go to such of them as shall

(Chapter II.—Of Transfers of Property by Act of Parties. Secs. 25-27.)

be alive when the intermediate or precedent interest ceases to exist, unless a contrary intention appears from the terms of the transfer.

persons as ~  
survive at  
some period  
not specified.

*Illustration.*

A transfers property to B for life, and after his death to C and D equally, to be divided between them, or to the survivor of them. C dies during the life of B. D survives B. At B's death the property passes to D.

**25.** An interest created on a transfer of property and dependent upon a condition fails if the fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to public policy.

Conditional  
transfer.

*Illustrations.*

(a) A lets a farm to B on condition that he shall walk a hundred miles in an hour. The lease is void.

(b) A gives Rs. 500 to B on condition that he shall marry A's daughter C. At the date of the transfer C was dead. The transfer is void.

(c) A transfers Rs. 500 to B on condition that she shall murder C. The transfer is void.

(d) A transfers Rs. 500 to his niece C if she will desert her husband. The transfer is void.

**26.** Where the terms of a transfer of property impose a condition to be fulfilled before a person can take an interest in the property, the condition shall be deemed to have been fulfilled if it has been substantially complied with.

Fulfilment  
of condition  
precedent

*Illustrations.*

(a) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. E dies. B marries with the consent of C and D. B is deemed to have fulfilled the condition.

(b) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. B marries without the consent of C, D and E, but obtains their consent after the marriage. B has not fulfilled the condition.

**27.** Where, on a transfer of property, an interest therein is created in favour of one person, and by the same transaction an ulterior disposition of the same interest is made in favour of another, if the prior disposition under the transfer shall fail, the ulterior disposition shall take effect upon the failure of the prior disposition, although the failure may not have occurred in the manner contemplated by the transferor.

Conditional  
transfer to  
one person  
coupled with  
transfer to  
another on  
failure of  
prior dis-  
position.

(Chapter II.—Of Transfers of Property by Act of Parties. Secs. 23-31.)

But, where the intention of the parties to the transaction is that the ulterior disposition shall take effect only in the event of the prior disposition failing in a particular manner, the ulterior disposition shall not take effect unless the prior disposition fails in that manner.

#### Illustrations

(a) A transfers Rs. 500 to B on condition that he shall execute a certain lease within three months after A's death, and, if he should neglect to do so, to C. B dies in A's lifetime. The disposition in favour of C takes effect.

(b) A transfers property to his wife, but, in case she should die in his lifetime, transfers to B that which he had transferred to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him. The disposition in favour of B does not take effect.

Ulterior  
transfer con-  
ditional on  
happening or  
not happen-  
ing of speci-  
fied event

28. On a transfer of property an interest therein may be created to accrue to any person with the condition superadded that in case a specified uncertain event shall happen such interest shall pass to another person, or that in case a specified uncertain event shall not happen such interest shall pass to another person. In each case the dispositions are subject to the rules contained in sections 10, 12, 21, 22, 23, 24, 25 and 27.

Fulfilment of  
condition  
subsequent

29. An ulterior disposition of the kind contemplated by the last preceding section cannot take effect unless the condition is strictly fulfilled.

#### Illustration.

A transfers Rs. 500 to B, to be paid to him on his attaining his majority or marrying, with a proviso that, if B dies a minor or marries without C's consent, the Rs. 500 shall go to D. B marries when only 17 years of age, without C's consent. The transfer to D takes effect.

Prior disposi-  
tion not  
affected by  
invalidity of  
ulterior  
disposition

30. If the ulterior disposition is not valid, the prior disposition is not affected by it.

#### Illustration

A transfers a farm to B for her life, and, if she do not desert her husband, to C. B is entitled to the farm during her life as if no condition had been inserted.

Condition  
that transfer  
shall cease  
to have  
effect in  
case speci-  
fied uncertain  
event  
happens or  
does not  
happen

31. Subject to the provisions of section 12, on a transfer of property, an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

#### Illustrations.

(a) A transfers a farm to B for his life, with a proviso that, in case B cuts down a certain wood, the transfer shall cease to have any effect. B cuts down the wood. He loses his life-interest in the farm.

(Chapter II.—Of Transfers of Property by Act of Parties. Secs. 32-35.)

(b) A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. B does not go to England within the term prescribed. His interest in the farm ceases.

32. In order that a condition that an interest shall cease to exist may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of the creation of an interest.

Such condition must not be invalid.

33. Where, on a transfer of property, an interest therein is created subject to a condition that the person taking it shall perform a certain act, but no time is specified for the performance of the act, the condition is broken when he renders impossible, permanently or for an indefinite period, the performance of the act.

Transfer conditional on performance of act, no time being specified for performance.

34. Where an act is to be performed by a person either as a condition to be fulfilled before an interest created on a transfer of property is enjoyed by him, or as a condition on the non-fulfilment of which the interest is to pass from him to another person, and a time is specified for the performance of the act, if such performance within the specified time is prevented by the fraud of a person who would be directly benefited by non-fulfilment of the condition, such further time shall as against him be allowed for performing the act as shall be requisite to make up for the delay caused by such fraud. But if no time is specified for the performance of the act, then, if its performance is by the fraud of a person interested in the non-fulfilment of the condition rendered impossible or indefinitely postponed, the condition shall as against him be deemed to have been fulfilled.

Transfer conditional on performance of act, time being specified.

#### *Election.*

35. Where a person professes to transfer property which he has no right to transfer, and as part of the same transaction confers any benefit on the owner of the property, such owner must elect either to confirm such transfer or to dissent from it; and in the latter case he shall relinquish the benefit so conferred, and the benefit so relinquished shall revert to the transferor or his representative as if it had not been disposed of,

Election when necessary.

subject nevertheless,

where the transfer is gratuitous, and the transferor has, before the election, died or otherwise become incapable of making a fresh transfer,

and in all cases where the transfer is for consideration,

to the charge of making good to the disappointed transferee the amount or value of the property attempted to be transferred to him.

#### *Illustrations.*

The farm of Sultanpur is the property of C and worth Rs 800 A by an instrument

## (Chapter II—Of Transfers of Property by Act of Parties. Sec. 35)

of gift professes to transfer it to B, giving by the same instrument Rs. 1,000 to C. C elects to retain the farm. He forfeits the gift of Rs. 1,000.

In the same case, A dies before the election. His representative must out of the Rs. 1,000 pay Rs. 800 to B.

The rule in the first paragraph of this section applies whether the transferor does or does not believe that which he professes to transfer to be his own.

A person taking no benefit directly under a transaction, but deriving a benefit under it indirectly, need not elect.

A person who in his one capacity takes a benefit under the transaction may in another dissent therefrom.

*Exception to the last preceding four rules.*—Where a particular benefit is expressed to be conferred on the owner of the property which the transferor professes to transfer, and such benefit is expressed to be in lieu of that property, if such owner claim the property, he must relinquish the particular benefit, but he is not bound to relinquish any other benefit conferred upon him by the same transaction.

Acceptance of the benefit by the person on whom it is conferred constitutes an election by him to confirm the transfer, if he is aware of his duty to elect and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives enquiry into the circumstances

Such knowledge or waiver shall, in the absence of evidence to the contrary, be presumed, if the person on whom the benefit has been conferred has enjoyed it for two years without doing any act to express dissent.

Such knowledge or waiver may be inferred from any act of his which renders it impossible to place the persons interested in the property professed to be transferred in the same condition as if such act had not been done.

*Illustration.*

A transfers to B an estate to which C is entitled, and as part of the same transaction gives C a coal-mine. C takes possession of the mine and exhausts it. He has thereby confirmed the transfer of the estate to B.

If he does not within one year after the date of the transfer signify to the transferor or his representatives his intention to confirm or to dissent from the transfer, the transferor or his representatives may, upon the expiration of that period, require him to make his election; and, if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the transfer.

(Chapter II.—Of Transfers of Property by Act of Parties. Secs. 36-37.)

In case of disability, the election shall be postponed until the disability ceases, or until the election is made by some competent authority.

*Apportionment.*

36. In the absence of a contract or local usage to the contrary, all rents, annuities, pensions, dividends and other periodical payments in the nature of income shall, upon the transfer of the interest of the person entitled to receive such payments, be deemed, as between the transferor and the transferee, to accrue due from day to day, and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof.

Apportionment of periodical payments on determination of interest of person entitled

37. When, in consequence of a transfer, property is divided and held in several shares, and thereupon the benefit of any obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty shall, in the absence of a contract to the contrary amongst the owners, be performed in favour of each of such owners in proportion to the value of his share in the property, provided that the duty can be severed and that the severance does not substantially increase the burden of the obligation; but if the duty cannot be severed, or if the severance would substantially increase the burden of the obligation, the duty shall be performed for the benefit of such one of the several owners as they shall jointly designate for that purpose:

Apportionment of benefit of obligation on severance.

Provided that no person on whom the burden of the obligation lies shall be answerable for failure to discharge it in manner provided by this section, unless and until he has had reasonable notice of the severance.

Nothing in this section applies to leases for agricultural purposes unless and until the Local Government by notification in the official Gazette so directs.

*Illustrations*

(a) A sells to B, C and D a house situate in a village and leased to E at an annual rent of Rs 30 and delivery of one fat sheep, B having provided half the purchase-money and C and D one quarter each. E, having notice of this, must pay Rs 15 to B, Rs 7½ to C, and Rs 7½ to D, and must deliver the sheep according to the joint direction of B, C and D.

(b) In the same case, each house in the village being bound to provide ten days' labour each year on a dyke to prevent inundation, E had agreed as a term of his lease to perform this work for A. B, C and D severally require E to perform the ten days' work due on account of the house of each. E is not bound to do more than ten days' work in all, according to such directions as B, C and D may join in giving

(b) *Transfer of Immoveable Property*

Transfer by  
person  
authorized  
only under  
certain cir-  
cumstances  
to transfer.

38. Where any person, authorized only under circumstances in their nature variable to dispose of immoveable property, transfers such property for consideration, alleging the existence of such circumstances, they shall, as between the transferee on the one part and the transferor and other persons (if any) affected by the transfer on the other part, be deemed to have existed, if the transferee, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith.

*Illustration.*

A, a Hindú widow, whose husband has left collateral heirs, alleging that the property held by her as such is insufficient for her maintenance, agrees, for purposes neither religious nor charitable, to sell a field, part of such property, to B. B satisfies himself by reasonable enquiry that the income of the property is insufficient for A's maintenance, and that the sale of the field is necessary, and, acting in good faith, buys the field from A. As between B on the one part and A and the collateral heirs on the other part, a necessity for the sale shall be deemed to have existed.

Transfer  
where third  
person is  
entitled to  
maintenance.

39. Where a third person has a right to receive maintenance or a provision for advancement or marriage, from the profits of immoveable property, and such property is transferred with the intention of defeating such right, the right may be enforced against the transferee, if he has notice of such intention or if the transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands.

*Illustration.*

A, a Hindú, transfers Sultanpur to his sister-in-law B, in lieu of her claim against him for maintenance in virtue of his having become entitled to her deceased husband's property, and agrees with her that, if she is dispossessed of Sultanpur, A will transfer to her an equal area out of such of several other specified villages in his possession as she may elect. A sells the specified villages to C, who buys in good faith, without notice of the agreement. B is dispossessed of Sultanpur. She has no claim on the villages transferred to C.

Burden of  
obligation  
imposing  
restriction  
on use of  
land,

40. Where, for the more beneficial enjoyment of his own immoveable property, a third person has, independently of any interest in the immoveable property of another or of any easement thereon, a right to restrain the enjoyment of the latter property or to compel its enjoyment in a particular manner, or

or of obliga-

where a third person is entitled to the benefit of an obligation arising

(Chapter II.—Of Transfers of Property by Act of Parties. Secs. 41-43.)

out of contract and annexed to the ownership of immoveable property, but not amounting to an interest therein or easement thereon,

such right or obligation may be enforced against a transferee with notice thereof or a gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation, nor against such property in his hands.

tion annexed to ownership but not amounting to interest or easement.

#### Illustration.

A contracts to sell Sultanpur to B. While the contract is still in force he sells Sultanpur to C, who has notice of the contract. B may enforce the contract against C to the same extent as against A.

41. Where, with the consent, express or implied, of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it; provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

Transfer by ostensible owner.

42. Where a person transfers any immoveable property, reserving power to revoke the transfer, and subsequently transfers the property for consideration to another transferee, such transfer operates in favour of such transferee (subject to any condition attached to the exercise of the power) as a revocation of the former transfer to the extent of the power.

Transfer by person having authority to revoke former transfer.

#### Illustration.

A lets a house to B, and reserves power to revoke the lease if, in the opinion of a specified surveyor, B should make a use of it detrimental to its value. Afterwards A, thinking that such a use has been made, lets the house to C. This operates as a revocation of B's lease subject to the opinion of the surveyor as to B's use of the house having been detrimental to its value.

43. Where a person erroneously represents that he is authorized to transfer certain immoveable property, and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may require in such property at any time during which the contract of transfer subsists.

Transfer by unauthorized person who subsequently acquires interest in property transferred.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

#### Illustration.

A, a Hindú, who has separated from his father B, sells to C three fields, X, Y and Z, representing that A is authorized to transfer the same. Of these fields Z does not belong to A, it having been retained by B on the partition, but on B's dying, A as

(Chapter II.—Of Transfers of Property by Act of Parties. Secs. 44-46.)

heir obtains Z C, not having rescinded the contract of sale, may require A to deliver Z to him.

Transfer by  
one co-  
owner.

44. Where one of two or more co-owners of immoveable property legally competent in that behalf transfers his share of such property or any interest therein; the transferee acquires, as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.

Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.

Joint trans-  
fer for con-  
sideration.

45. Where immoveable property is transferred for consideration to two or more persons, and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and, where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.

Transfer for  
considera-  
tion by per-  
sons having  
distinct in-  
terests.

46. Where immoveable property is transferred for consideration by persons having distinct interests therein, the transferors are, in the absence of a contract to the contrary, entitled to share in the consideration equally, where their interests in the property were of equal value, and, where such interests were of unequal value, proportionately to the value of their respective interests.

#### Illustrations.

(a) A, owning a moiety, and B and C, each a quarter share, of mauza Sultanpur, exchange an eighth share of that mauza for a quarter share of mauza Lalpura. There being no agreement to the contrary, A is entitled to an eighth share in Lalpura, and B and C each to a sixteenth share in that mauza.

(b) A, being entitled to a life-interest in mauza Atrali and B and C to the reversion, sell the mauza for Rs. 1,000 A's life-interest is ascertained to be worth

## (Chapter II—Of Transfers of Property by Act of Parties. Secs. 47-51)

Rs 600, the reversion Rs 400 A is entitled to receive Rs 600 out of the purchase-money, B and C to receive Rs. 400.

47. Where several co-owners of immoveable property transfer a share therein without specifying that the transfer is to take effect on any particular share or shares of the transferors, the transfer, as among such transferors, takes effect on such shares equally where the shares were equal, and, where they were unequal, proportionately to the extent of such shares.

Transfer by co-owners of share in common property.

*Illustration.*

A, the owner of an eight-anna share, and B and C, each the owner of a four-anna share, in mauza Sultanpur, transfer a two-anna share in the mauza to D, without specifying from which of their several shares the transfer is made. To give effect to the transfer one-anna share is taken from the share of A, and half an anna share from each of the shares of B and C.

48. Where a person purports to create by transfer at different times rights in or over the same immoveable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

Priority of rights created by transfer.

49. Where immoveable property is transferred for consideration, and such property or any part thereof is at the date of the transfer insured against loss or damage by fire, the transferee, in case of such loss or damage, may, in the absence of a contract to the contrary, require any money which the transferor actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property.

Transferee's right under policy.

50. No person shall be chargeable with any rents or profits of any immoveable property, which he has in good faith paid or delivered to any person of whom he in good faith held such property, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits.

Rent bond *fide* paid holder under defective title.

*Illustration.*

A lets a field to B at a rent of Rs 50, and then transfers the field to C. B, having no notice of the transfer, in good faith pays the rent to A. B is not chargeable with the rent so paid.

51. When the transferee of immoveable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in the property to the

Improvements made by bond *fide* holders under defective titles.

(Chapter II—Of Transfers of Property by Act of Parties. Secs. 52-53.

Chapter III.—Of Sales of Immoveable Property. Sec. 54)

transferee at the then market value thereof irrespective of the value of such improvement.

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction

When, under the circumstances aforesaid, the transferee has planted or sown on the property crops which are growing when he is evicted therefrom, he is entitled to such crops and to free ingress and egress to gather and carry them.

Transfer of  
property  
pending suit  
relating  
thereto.

52. During the active prosecution in any Court having authority in British India, or established beyond the limits of British India by the Governor General in Council, of a contentious suit or proceeding in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Fraudulent  
transfer.

53. Every transfer of immoveable property, made with intent to defraud prior or subsequent transferees thereof for consideration, or co-owners or other persons having an interest in such property, or to defeat or delay the creditors of the transferor, is voidable at the option of any person so defrauded, defeated or delayed.

Where the effect of any transfer of immoveable property is to defraud, defeat or delay any such person, and such transfer is made gratuitously or for a grossly inadequate consideration, the transfer may be presumed to have been made with such intent as aforesaid.

Nothing contained in this section shall impair the rights of any transferee in good faith and for consideration.

### CHAPTER III.

#### OF SALES OF IMMOVEABLE PROPERTY.

"Sale"  
defined.

54. "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how  
made.

<sup>1</sup> Such transfer, in the case of tangible immoveable property of the

<sup>1</sup> As to limitation to the territorial operation of paragraphs 2 and 3 of s. 54, see s. 1, *supra*. These paragraphs extend to every cantonment in British India, see the Cantonments Act, 1889 (XIII of 1889), s. 32 (1), printed, General Acts, Vol. V, Ed. 1898, p. 335.

## (Chapter III.—Of Sales of Immoveable Property. Sec. 55)

value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument

<sup>1</sup> In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

Contract for  
sale

It does not, of itself, create any interest in or charge on such property.

55. In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold:

Rights and  
liabilities of  
buyer and  
seller

(1) The seller is bound—

- (a) to disclose to the buyer any material defect in the property of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover,
- (b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;
- (c) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto,
- (d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;
- (e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents;
- (f) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits;
- (g) to pay all public charges and rent accrued due in respect of the property, up to the date of the sale, the interest on all

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<sup>1</sup> See footnote on p 56, *supra*

*(Chapter III.—Of Sales of Immoveable Property. Sec. 55.)*

incumbrances on such property due on such date, and, except where the property is sold subject to incumbrances, to discharge all incumbrances on the property then existing.

(2) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same:

Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is incumbered or whereby he is hindered from transferring it.

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested

(3) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power:

Provided that (a), where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and (b), where the whole of such property is sold to different buyers, the buyer of the lot of greatest value is entitled to such documents. But in case (a) the seller, and in case (b) the buyer of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof or extracts therefrom as he may require; and in the meantime, the seller, or the buyer of the lot of greatest value, as the case may be, shall keep the said documents safe, uncanceled and undefaced, unless prevented from so doing by fire or other inevitable accident.

(4) The seller is entitled—

(a) to the rents and profits of the property till the ownership thereof passes to the buyer;

(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part.

(5) The buyer is bound—

(a) to disclose to the seller any fact as to the nature or extent of the

*(Chapter III—Of Sales of Immoveable Property. Sec. 56.)*

seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest;

- (b) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs: provided that, where the property is sold free from incumbrances, the buyer may retain out of the purchase-money the amount of any incumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;
  - (c) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller;
  - (d) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any incumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.
- (6) The buyer is entitled—
- (a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;
  - (b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him with notice of the payment, to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

An omission to make such disclosures as are mentioned in this section, paragraph (1), clause (a), and paragraph (5), clause (a), is fraudulent.

**56.** Where two properties are subject to a common charge, and one of the properties is sold, the buyer is, as against the seller, in the absence of a contract to the contrary, entitled to have the charge satisfied out of the other property, so far as such property will extend.

Sale of one of two properties subject to a common charge.

## (Chapter III—Of Sales of Immoveable Property Sec. 57)

*Discharge of Incumbrances on Sale*

Provision by  
Court for  
incum-  
brances, and  
sale freed  
therefrom.

57. (a) Where immoveable property subject to any incumbrance, whether immediately payable or not, is sold by the Court or in execution of a decree, or out of Court, the Court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into Court,—

- (1) in case of an annual or monthly sum charged on the property, or of a capital sum charged on a determinable interest in the property,—of such amount as, when invested in securities of the Government of India, the Court considers will be sufficient, by means of the interest thereof, to keep down or otherwise provide for that charge, and
- (2) in any other case of a capital sum charged on the property,—of the amount sufficient to meet the incumbrance and any interest due thereon.

But in either case there shall also be paid into Court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses and interest, and any other contingency except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reasons (which it shall record) thinks fit to require a larger additional amount.

(b) Thereupon the Court may, if it thinks fit, and after notice to the incumbrancer, unless the Court, for reasons to be recorded in writing, thinks fit to dispense with such notice, declare the property to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in Court.

(c) After notice served on the persons interested in or entitled to the money or fund in Court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(d) An appeal shall lie from any declaration, order or direction under this section as if the same were a decree

(e) In this section "Court" means (1) a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, (2) the Court of a District Judge within the local limits of whose jurisdiction the property or any part thereof is situate, (3) any other Court which the Local Government may, from time to time, by notification in the official Gazette, declare to be competent to exercise the jurisdiction conferred by this section.

## CHAPTER IV.

## OF MORTGAGES OF IMMOVEABLE PROPERTY AND CHARGES.

58. (a) A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

"Mortgage,"  
"mortgagor,"  
"mortgagee,"  
"mortgage-money" and  
"mortgage-deed" defined

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

(b) Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

Simple mortgage.

(c) Where the mortgagor ostensibly sells the mortgaged property—  
on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or

Mortgage by conditional sale.

on condition that on such payment being made the sale shall become void, or

on condition that on such payment being made the buyer shall transfer the property to the seller,

the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale.

(d) Where the mortgagor delivers possession of the mortgaged property to the mortgagee, and authorizes him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property and to appropriate them in lieu of interest, or in payment of the mortgage-money, or partly in lieu of interest and partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee

Usufructuary mortgage.

(e) Where the mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the

English mortgage

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.  
Secs. 59-60.)

mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

Mortgage  
when to be  
by assur-  
ance.

<sup>1</sup> 59. Where the principal money secured is one hundred rupees or upwards a mortgage can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses.

Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by an instrument signed and attested as aforesaid, or (except in the case of a simple mortgage) by delivery of the property.

Nothing in this section shall be deemed to render invalid mortgages made in the towns of Calcutta, Madras, Bombay, Karachi and Rangoon, by delivery to a creditor or his agent of documents of title to immoveable property, with intent to create a security thereon.

*Rights and Liabilities of Mortgagor.*

Right of  
mortgagor to  
redeem.

60. At any time after the principal money has become payable, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver the mortgage-deed, if any, to the mortgagor, (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

Provided that the right conferred by this section has not been extinguished by act of the parties or by order of a Court.

The right conferred by this section is called a right to redeem, and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

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<sup>1</sup> As to limitation to the territorial operation of s 59, see s 1, *supra*. S 59 extends to every cantonment in British India, see the Cantonments Act, 1889 (XIII of 1889), s 32 (1), printed, General Acts, Vol. V, Ed 1898, p. 335

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.  
Secs. 61-63.)

Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor.

Redemption of portion of mortgaged property.

61. A mortgagor seeking to redeem any one mortgage shall, in the absence of a contract to the contrary, be entitled to do so without paying any money due under any separate mortgage made by him, or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to redeem.

Right to redeem one of two properties separately mortgaged.

*Illustration.*

A, the owner of farms Z and Y, mortgages Z to B for Rs. 1,000 A afterwards mortgages Y to B for Rs. 1,000, making no stipulation as to any additional charge on Z A may institute a suit for the redemption of the mortgage on Z alone.

62. In the case of a usufructuary mortgage, the mortgagor has a right to recover possession of the property—

Right of usufructuary mortgagor to recover possession.

(a) where the mortgagee is authorized to pay himself the mortgage-money from the rents and profits of the property,—when such money is paid;

(b) where the mortgagee is authorized to pay himself from such rents and profits the interest of the principal money,—when the term (if any) prescribed for the payment of the mortgage-money has expired and the mortgagor pays or tenders to the mortgagee the principal money, or deposits it in Court as hereinafter provided

63. Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, received any accession, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled as against the mortgagee to such accession

Accession to mortgaged property.

Where such accession has been acquired at the expense of the mortgagee, and is capable of separate possession or enjoyment without detriment to the principal property, the mortgagor desiring to take the accession must pay to the mortgagee the expense of acquiring it. If such separate possession or enjoyment is not possible, the accession must be delivered with the property, the mortgagor being liable, in the case of an acquisition necessary to preserve the property from destruction, forfeiture or sale, or made with his assent, to pay the proper cost thereof, as an addition to the principal money, at the same rate of interest.

Accession acquired in virtue of transferred ownership.

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.  
Secs. 64-65)

In the case last mentioned the profits, if any, arising from the accession shall be credited to the mortgagor.

Where the mortgage is usufructuary and the accession has been acquired at the expense of the mortgagee, the profits, if any, arising from the accession shall, in the absence of a contract to the contrary, be set off against interest, if any, payable on the money so expended

Renewal of  
mortgaged  
lease.

64. Where the mortgaged property is a lease for a term of years, and the mortgagee obtains a renewal of the lease, the mortgagor, upon redemption, shall, in the absence of a contract by him to the contrary, have the benefit of the new lease

Implied  
contracts  
by mort-  
gagor.

65. In the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee—

- (a) that the interest which the mortgagor professes to transfer to the mortgagee subsists, and that the mortgagor has power to transfer the same,
- (b) that the mortgagor will defend, or, if the mortgagee be in possession of the mortgaged property, enable him to defend the mortgagor's title thereto,
- (c) that the mortgagor will, so long as the mortgagee is not in possession of the mortgaged property, pay all public charges accruing due in respect of the property;
- (d) and, where the mortgaged property is a lease for a term of years, that the rent payable under the lease, the conditions contained therein, and the contracts binding on the lessee have been paid, performed and observed down to the commencement of the mortgage; and that the mortgagor will, so long as the security exists and the mortgagee is not in possession of the mortgaged property, pay the rent reserved by the lease, or, if the lease be renewed, the renewed lease, perform the conditions contained therein and observe the contracts binding on the lessee, and indemnify the mortgagee against all claims sustained by reason of the non-payment of the said rent or the non-performance or non-observance of the said conditions and contracts;
- (e) and, where the mortgage is a second or subsequent incumbrance on the property, that the mortgagor will pay the interest from time to time accruing due on each prior incumbrance as and when it becomes due, and will at the proper time discharge the principal money due on such prior incumbrance.

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.  
Secs. 66-67.)

Nothing in clause (c), or in clause (d), so far as it relates to the payment of future rent, applies in the case of an usufructuary mortgage.

The benefit of the contracts mentioned in this section shall be annexed to and shall go with the interest of the mortgagee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

66. A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to deteriorate; but he must not commit any act which is destructive or permanently injurious thereto, if the security is insufficient or will be rendered insufficient by such act.

Waste by  
mortgagor in  
possession.

*Explanation.*—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

*Rights and Liabilities of Mortgagee.*

67. In the absence of a contract to the contrary, the mortgagee has at any time after the mortgage-money has become payable to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid or deposited as hereinafter provided, a right to obtain from the Court an order that the mortgagor shall be absolutely debarred of his right to redeem the property, or an order that the property be sold.

Right to  
foreclosure or  
sale

A suit to obtain an order that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure.

Nothing in this section shall be deemed—

- (a) to authorize a simple mortgagee as such to institute a suit for foreclosure, or an usufructuary mortgagee as such to institute a suit for foreclosure or sale, or a mortgagee by conditional sale as such to institute a suit for sale; or
- (b) to authorize a mortgagor who holds the mortgagee's rights as his trustee or legal representative, and who may sue for a sale of the property, to institute a suit for foreclosure; or
- (c) to authorize the mortgagee of a railway, canal or other work in the maintenance of which the public are interested, to institute a suit for foreclosure or sale; or
- (d) to authorize a person interested in part only of the mortgage-money, to institute a suit relating only to a corresponding part of the

(Chapter IV—Of Mortgages of Immoveable Property and Charges.  
Secs. 68-69)

mortgaged property, unless the mortgagees have, with the consent of the mortgagor, severed their interests under the mortgage.

Right to sue  
for mort-  
gage-money.

68. The mortgagee has a right to sue the mortgagor for the mortgage-money in the following cases only:—

- (a) where the mortgagor binds himself to repay the same:
- (b) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor:
- (c) where, the mortgagee being entitled to possession of the property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any other person.

Where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property has been wholly or partially destroyed, or the security is rendered insufficient as defined in section 66, the mortgagee may require the mortgagor to give him within a reasonable time another sufficient security for his debt, and, if the mortgagor fails so to do, may sue him for the mortgage-money.

Power of  
sale when  
valid.

69. A power conferred by the mortgage-deed on the mortgagee, or on any person on his behalf, to sell or concur in selling, in default of payment of the mortgage-money, the mortgaged property, or any part thereof, without the intervention of the Court, is valid in the following cases <sup>1</sup> [and in no others], namely:—

- (a) where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindú, Muhammadan or Buddhist <sup>1</sup>[or a member of any other race, sect, tribe or class from time to time specified in this behalf by the Local Government, with the previous sanction of the Governor General in Council, in the local official Gazette;]
- (b) where the mortgagee is the Secretary of State for India in Council;
- (c) where the mortgaged property or any part thereof is situate within the towns of Calcutta, Madras, Bombay, Karachi or Rangoon.

But no such power shall be exercised unless and until—

- (1) notice in writing requiring payment of the principal money has been served on the mortgagor, or on one of several mortgagors,

<sup>1</sup> These words were inserted by the Transfer of Property Act (1882) Amendment Act, 1885 (III of 1885), s 5, printed, General Acts, Vol V, Ed 1898, p 3

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.  
Sec. 70)

- and default has been made in payment of the principal money, or of part thereof, for three months after such service; or
- (2) some interest under the mortgage amounting at least to five hundred rupees is in arrear and unpaid for three months after becoming due.

When a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorize the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damaged by an unauthorized or improper or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances, if any, to which the sale is not made subject, or after payment into Court under section 57 of a sum to meet any prior incumbrance, shall, in the absence of a contract to the contrary, be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale; and, secondly, in discharge of the mortgage-money and costs and other money, if any, due under the mortgage, and the residue of the money so received shall be paid to the person entitled to the mortgaged property or authorized to give receipts for the proceeds of the sale thereof.

Nothing in the former part of this section applies to powers conferred before this Act comes into force

XXVIII of  
1866

The powers and provisions contained in sections 6 to 19 (both inclusive) of the Trustees and Mortgagees' Powers Act, 1866,<sup>1</sup> shall be deemed to apply to English mortgages, wherever in British India the mortgaged property may be situate, when neither the mortgagor nor the mortgagee is a Hindú, Muhammadan or Buddhist <sup>2</sup>[or a member of any other race, sect, tribe or class from time to time specified in this behalf by the Local Government, with the previous sanction of the Governor General in Council, in the local official Gazette].

**70.** If, after the date of a mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to such accession.

Accession to  
mortgaged  
property.

<sup>1</sup> Printed, General Acts, Vol I, p 611

<sup>2</sup> These words were inserted by the Transfer of Property Act, 1885 (III of 1885), s. printed, General Acts, Vol V, Ed 1898, p 3.

## (Chapter IV.—Of Mortgages of Immoveable Property and Charges.

Secs. 71-72.)

## Illustrations

(a) A mortgages to B a certain field bordering on a river. The field is increased by alluvion. For the purposes of his security, B is entitled to the increase.

(b) A mortgages a certain plot of building land to B and afterwards erects a house on the plot. For the purposes of his security B is entitled to the house as well as the plot.

Renewal of  
mortgaged  
lease

71. When the mortgaged property is a lease for a term of years, and the mortgagor obtains a renewal of the lease, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to the new lease.

Rights of  
mortgagee  
in possession.

72. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he may spend such money as is necessary—

- (a) for the due management of the property and the collection of the rents and profits thereof;
- (b) for its preservation from destruction, forfeiture or sale;
- (c) for supporting the mortgagor's title to the property;
- (d) for making his own title thereto good against the mortgagor; and
- (e) when the mortgaged property is a renewable leasehold, for the renewal of the lease;

and may, in the absence of a contract to the contrary, add such money to the principal money, at the rate of interest payable on the principal, and, where no such rate is fixed, at the rate of nine per cent per annum.

Where the property is by its nature insurable, the mortgagee may also, in the absence of a contract to the contrary, insure and keep insured against loss or damage by fire the whole or any part of such property; and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the principal money, with the same priority and with interest at the same rate. But the amount of such insurance shall not exceed the amount specified in this behalf in the mortgage-deed or (if no such amount is therein specified) two-thirds of the amount that would be required in case of total destruction to reinstate the property insured.

Nothing in this section shall be deemed to authorize the mortgagee to insure when an insurance of the property is kept up by or on behalf of the mortgagor to the amount in which the mortgagee is hereby authorized to insure.

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.  
Secs. 73-76)

73. Where mortgaged property is sold through failure to pay arrears of revenue or rent due in respect thereof, the mortgagee has a charge on the surplus, if any, of the proceeds after payment thereout of the said arrears, for the amount remaining due on the mortgage, unless the sale has been occasioned by some default on his part.

Charge on proceeds of revenue sale.

74. Any second or other subsequent mortgagee may, at any time after the amount due on the next prior mortgage has become payable, tender such amount to the next prior mortgagee, and such mortgagee is bound to accept such tender and to give a receipt for such amount, and (subject to the provisions of the law<sup>1</sup> for the time being in force regulating the registration of documents) the subsequent mortgagee shall, on obtaining such receipt, acquire in respect of the property all the rights and powers of the mortgagee, as such, to whom he has made such tender.

Right of subsequent mortgagee to pay off prior mortgage.

75. Every second or other subsequent mortgagee has, so far as regards redemption, foreclosure and sale of the mortgaged property, the same rights against the prior mortgagee or mortgagees as his mortgagor has against such prior mortgagee or mortgagees, and the same rights against the subsequent mortgagees (if any) as he has against his mortgagor.

Rights of mesne mortgagee against prior and subsequent mortgagees.

76. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property,—

Liabilities of mortgagee in possession.

- (a) he must manage the property as a person of ordinary prudence would manage it if it were his own;
- (b) he must use his best endeavours to collect the rents and profits thereof;
- (c) he must, in the absence of a contract to the contrary, out of the income of the property, pay the Government revenue, all other charges of a public nature accruing due in respect thereof during such possession and any arrears of rent in default of payment of which the property may be summarily sold;
- (d) he must, in the absence of a contract to the contrary, make such necessary repairs of the property as he can pay for out of the rents and profits thereof after deducting from such rents and profits the payments mentioned in clause (c) and the interest on the principal money;
- (e) he must not commit any act which is destructive or permanently injurious to the property;

<sup>1</sup> See the Indian Registration Act, 1877 (III of 1877), printed, General Acts, Ed 1898, Vol III, p 41.

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.  
Sec. 77.)

- (f) where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy or so much thereof as may be necessary, in reinstating the property, or, if the mortgagor so directs, in reduction or discharge of the mortgage-money;
- (g) he must keep clear, full and accurate accounts of all sums received and spent by him as mortgagee, and, at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported;
- (h) his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation-rent in respect thereof, shall, after deducting the expenses mentioned in clauses (c) and (d), and interest thereon, be debited against him in reduction of the amount (if any) from time to time due to him on account of interest on the mortgage-money and, so far as such receipts exceed any interest due, in reduction or discharge of the mortgage-money; the surplus, if any, shall be paid to the mortgagor,
- (i) when the mortgagor tenders, or deposits in manner hereinafter provided, the amount for the time being due on the mortgage, the mortgagee must, notwithstanding the provisions in the other clauses of this section, account for his gross receipts from the mortgaged property from the date of the tender or from the earliest time when he could take such amount out of Court, as the case may be.

Loss occasioned by his default.

If the mortgagee fail to perform any of the duties imposed upon him by this section, he may, when accounts are taken in pursuance of a decree made under this Chapter, be debited with the loss, if any, occasioned by such failure.

Receipts in lieu of interest.

77. Nothing in section 76, clauses (b), (d), (g) and (h), applies to cases where there is a contract between the mortgagee and the mortgagor that the receipts from the mortgaged property shall, so long as the mortgagee is in possession of the property, be taken in lieu of interest on the principal money, or in lieu of such interest and defined portions of the principal.

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.  
Secs. 78-82)

*Priority.*

78. Where, through the fraud, misrepresentation or gross neglect of a prior mortgagee, another person has been induced to advance money on the security of the mortgaged property, the prior mortgagee shall be postponed to the subsequent mortgagee.

Postponement of prior mortgagee.

79. If a mortgage made to secure future advances, the performance of an engagement or the balance of a running account, expresses the maximum to be secured thereby, a subsequent mortgage of the same property shall, if made with notice of the prior mortgage, be postponed to the prior mortgage in respect of all advances or debits not exceeding the maximum, though made or allowed with notice of the subsequent mortgage.

Mortgage to secure uncertain amount when maximum is expressed.

*Illustration.*

A mortgages Sultanpur to his bankers, B & Co, to secure the balance of his account with them to the extent of Rs 10,000 A then mortgages Sultanpur to C, to secure Rs 10,000, C having notice of the mortgage to B & Co, and C gives notice to B & Co. of the second mortgage At the date of the second mortgage, the balance due to B & Co. does not exceed Rs 5,000 B & Co subsequently advance to A sums making the balance of the account against him exceed the sum of Rs 10,000 B & Co. are entitled, to the extent of Rs 10,000, to priority over C.

80. No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security. And, except in the case provided for by section 79, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance.

Tacking abolished.

*Marshalling and Contribution*

81. If the owner of two properties mortgages them both to one person and then mortgages one of the properties to another person who has not notice of the former mortgage, the second mortgagee is, in the absence of a contract to the contrary, entitled to have the debt of the first mortgagee satisfied out of the property not mortgaged to the second mortgagee so far as such property will extend, but not so as to prejudice the rights of the first mortgagee or of any other person having acquired for valuable consideration an interest in either property.

Marshalling securities.

82. Where several properties, whether of one or several owners, are mortgaged to secure one debt, such properties are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the

Contribution to mortgage-debt.

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.  
Secs. 83-84.)

mortgage, after deducting from the value of each property the amount of any other incumbrance to which it is subject at the date of the mortgage.

Where, of two properties belonging to the same owner, one is mortgaged to secure one debt, and then both are mortgaged to secure another debt, and the former debt is paid out of the former property, each property is, in the absence of a contract to the contrary, liable to contribute rateably to the later debt after deducting the amount of the former debt from the value of the property out of which it has been paid.

Nothing in this section applies to a property liable under section 81 to the claim of the second mortgagee.

*Deposit in Court.*

Power to  
deposit in  
Court money  
due on  
mortgage.

83. At any time after the principal money has become payable and before a suit for redemption of the mortgaged property is barred, the mortgagor, or any other person entitled to institute such suit, may deposit, in any Court in which he might have instituted such suit, to the account of the mortgagee, the amount remaining due on the mortgage.

Right to  
money  
deposited by  
mortgagor.

The Court shall thereupon cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, on presenting a petition (verified in manner prescribed by law<sup>1</sup> for the verification of complaints) stating the amount then due on the mortgage, and his willingness to accept the money so deposited in full discharge of such amount, and on depositing in the same Court the mortgage-deed if then in his possession or power apply for and receive the money, and the mortgage-deed so deposited shall be delivered to the mortgagor or such other person as aforesaid.

Cessation of  
interest.

84. When the mortgagor or such other person as aforesaid has tendered or deposited in Court under section 83 the amount remaining due on the mortgage, interest on the principal money shall cease from the date of the tender or as soon as the mortgagor or such other person as aforesaid has done all that has to be done by him to enable the mortgagee to take such amount out of Court, as the case may be.

Nothing in this section or in section 83 shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to reasonable notice before payment or tender of the mortgage-money.

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<sup>1</sup> See the Code of Civil Procedure (Act XIV of 1882), ss. 51 and 52, printed, *infra*, p. 263.

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.  
Secs. 85-87.)

*Suits for Foreclosure, Sale or Redemption.*

85. Subject to the provisions of the Code of Civil Procedure, section 437<sup>1</sup>, all persons having an interest in the property comprised in a mortgage must be joined as parties to any suit under this Chapter relating to such mortgage: Provided that the plaintiff has notice of such interest.

Parties to  
suits for  
foreclosure,  
sale and  
redemption.

*Foreclosure and Sale.*

86. In a suit for foreclosure, if the plaintiff succeeds, the Court shall make a decree, ordering that an account be taken of what will be due to the plaintiff for principal and interest on the mortgage, and for his costs of the suit, if any, awarded to him, on the day next hereinafter referred to, or declaring the amount so due at the date of such decree,

Decree in  
foreclosure-  
suit.

and ordering that, upon the defendant paying to the plaintiff or into Court the amount so due, on a day within six months from the date of declaring in Court the amount so due, to be fixed by the Court, the plaintiff shall deliver up to the defendant, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall transfer the property to the defendant free from all incumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title, by those under whom he claims; and shall, if necessary, put the defendant into possession of the property; but

that, if the payment is not made on or before the day to be fixed by the Court, the defendant shall be absolutely debarred of all right to redeem the property.

87. If payment is made of such amount and of such subsequent costs as are mentioned in section 94, the defendant shall (if necessary) be put into possession of the mortgaged property.

Procedure in  
case of  
payment of  
amount due.

If such payment is not so made, the plaintiff may apply to the Court for an order that the defendant and all persons claiming through or under him be debarred absolutely of all right to redeem the mortgaged property, and the Court shall then pass such order, and may, if necessary, deliver possession of the property to the plaintiff:

Order  
absolute for  
foreclosure.

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<sup>1</sup> See s. 437 of Act XIV of 1882, printed, *infra*, p. 397.

(Chapter IV —Of Mortgages of Immoveable Property and Charges.  
Secs. 88-90)

Power to  
enlarge  
time

Provided that the Court may, upon good cause shewn, and upon such terms, if any, as it thinks fit, from time to time postpone the day appointed for such payment.

On the passing of an order under the second paragraph of this section the debt secured by the mortgage shall be deemed to be discharged

In the Code of Civil Procedure, Schedule IV, No 129,<sup>1</sup> for the words "Final decree," the words "Decree absolute" shall be substituted

Decree for  
sale.

88. In a suit for sale, if the plaintiff succeeds, the Court shall pass a decree to the effect mentioned in the first and second paragraphs of section 86, and also ordering that, in default of the defendant paying as therein mentioned, the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is so found due to the plaintiff, and that the balance, if any, be paid to the defendant or other persons entitled to receive the same.

Power to  
decree sale in  
foreclosure-  
suit.

In a suit for foreclosure, if the plaintiff succeeds and the mortgage is not a mortgage by conditional sale, the Court may, at the instance of the plaintiff, or of any person interested either in the mortgage-money or in the right of redemption, if it thinks fit, pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit, including, if it thinks fit, the deposit in Court of a reasonable sum, fixed by the Court, to meet the expenses of sale and to secure the performance of the terms.

Procedure  
when de-  
fendant pays  
amount due

89. If in any case under section 88 the defendant pays to the plaintiff or into Court on the day fixed as aforesaid the amount due under the mortgage, the costs, if any, awarded to him and such subsequent costs as are mentioned in section 94, the defendant shall (if necessary) be put in possession of the mortgaged property; but if such payment is not so made, the plaintiff or the defendant, as the case may be, may apply to the Court for an order absolute for sale of the mortgaged property, and the Court shall then pass an order that such property, or a sufficient part thereof, be sold, and that the proceeds of the sale be dealt with as is mentioned in section 88; and thereupon the defendant's right to redeem and the security shall both be extinguished.

Order abso-  
lute for sale.

Recovery of  
balance due  
on mortgage

90. When the nett proceeds of any such sale are insufficient to pay the amount due for the time being on the mortgage, if the balance is legally recoverable from the defendant otherwise than out of the property sold, the Court may pass a decree for such sum.

<sup>1</sup> See now Schedule IV, No 129 of Act XIV of 1882, printed, *infra*, p. 538.

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.  
Secs. 91-92.)

*Redemption*

91. Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property:—

Who may  
sue for  
redemption.

- (a) any person (other than the mortgagee of the interest sought to be redeemed), having any interest in or charge upon the property;
- (b) any person having any interest in or charge upon the right to redeem the property;
- (c) any surety for the payment of the mortgage-debt or any part thereof,
- (d) the guardian of the property of a minor mortgagor on behalf of such minor;
- (e) the committee or other legal curator of a lunatic or idiot mortgagor on behalf of such lunatic or idiot,
- (f) the judgment-creditor of the mortgagor, when he has obtained execution by attachment of the mortgagor's interest in the property;
- (g) a creditor of the mortgagor who has, in a suit for the administration of his estate, obtained a decree for sale of the mortgaged property

92. In a suit for redemption, if the plaintiff succeeds, the Court shall pass a decree ordering—

Decree in  
redemption-  
suit

that an account be taken of what will be due to the defendant for the mortgage-money and for his costs of the suit, if any, awarded to him, on the day next hereinafter referred to, or declaring the amount so due at the date of such decree;

that, upon the plaintiff paying to the defendant or into Court the amount so due on a day within six months from the date of declaring in Court the amount so due to be fixed by the Court, the defendant shall deliver up to the plaintiff, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall re-transfer it to the plaintiff free from the mortgage and from all incumbrances created by the defendant or any person claiming under him, or, when the defendant claims by derived title, by those under whom he claims, and shall, if necessary, put the plaintiff into possession of the mortgaged property; and

that, if such payment is not made on or before the day to be fixed by the Court, the plaintiff shall (unless the mortgage be simple or usufruc-

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.  
Secs. 93-96.)

tuary) be absolutely debarred of all right to redeem the property, or (unless the mortgage be by conditional sale) that the property be sold.

In case of  
redemption,  
possession

93. If payment is made of such amount and of such subsequent costs as are mentioned in section 94, the plaintiff shall, if necessary, be put into possession of the mortgaged property.

In default,  
foreclosure or  
sale

If such payment is not so made, the defendant may (unless the mortgage is simple or usufructuary) apply to the Court for an order that the plaintiff and all persons claiming through or under him be debarred absolutely of all right to redeem, or (unless the mortgage is by conditional sale) for an order that the mortgaged property be sold.

If he applies for the former order, the Court shall pass an order that the plaintiff and all persons claiming through or under him be absolutely debarred of all right to redeem the mortgaged property, and may, if necessary, deliver possession of the property to the defendant.

If he applies for the latter order, the Court shall pass an order that such property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is found due to the defendant, and that the balance be paid to the plaintiff or other persons entitled to receive the same.

On the passing of any order under this section the plaintiff's right to redeem and the security shall, as regards the property affected by the order, both be extinguished:

Power to  
enlarge time.

Provided that the Court may, upon good cause shown, and upon such terms, if any, as it thinks fit, from time to time postpone the day fixed under section 92 for payment to the defendant.

Costs of  
mortgagee  
subsequent  
to decree.

94. In finally adjusting the amount to be paid to a mortgagee in case of a redemption or a sale by the Court under this Chapter, the Court shall, unless the conduct of the mortgagee has been such as to disentitle him to costs, add to the mortgage-money such costs of suit as have been properly incurred by him since the decree for foreclosure, redemption or sale up to the time of actual payment.

Charge of  
one of  
several co-  
mortgagors  
who redeems.

95. Where one of several mortgagors redeems the mortgaged property and obtains possession thereof, he has a charge on the share of each of the other co-mortgagors in the property for his proportion of the expenses properly incurred in so redeeming and obtaining possession.

*Sale of Property subject to prior Mortgage.*

Sale of pro-  
perty subject

96. If any property the sale of which is directed under this Chapter is subject to a prior mortgage, the Court may, with the consent of the

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.  
Secs. 97-99.)

prior mortgagee, order that the property be sold free from the same, giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold. to prior mortgage.

97. Such proceeds shall be brought into Court and applied as follows :— Application of proceeds.
- first, in payment of all expenses incident to the sale, or properly incurred in any attempted sale ;
  - secondly, if the property has been sold free from any prior mortgage, in payment of whatever is due on account of such mortgage ;
  - thirdly, in payment of all interest due on account of the mortgage in consequence whereof the sale was directed, and of the costs of the suit in which the decree directing the sale was made ;
  - fourthly, in payment of the principal money due on account of that mortgage ; and
  - lastly, the residue (if any) shall be paid to the person proving himself to be interested in the property sold, or, if there be more such persons than one, then to such persons according to their respective interests therein or upon their joint receipt.

Nothing in this section or in section 96 shall be deemed to affect the powers conferred by section 57.

*Anomalous Mortgages.*

98. In the case of a mortgage not being a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage or an English mortgage, or a combination of the first and third, or the second and third, of such forms, the rights and liabilities of the parties shall be determined by their contract as evidenced in the mortgage-deed, and, so far as such contract does not extend, by local usage. Mortgage not described in section 58, clauses (b), (c), (d) and (e).

*Attachment of Mortgaged Property.*

99. Where a mortgagee in execution of a decree for the satisfaction of any claim, whether arising under the mortgage or not, attaches the mortgaged property, he shall not be entitled to bring such property to sale otherwise than by instituting a suit under section 67, and he may institute such suit notwithstanding anything contained in the Code of Civil Procedure, section 43<sup>1</sup>. Attachment of mortgaged property.

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<sup>1</sup> See now s. 43 of Act XIV of 1882, printed, *infra*, p. 262.

## (Chapter IV.—Of Mortgages of Immoveable Property and Charges.

Secs. 100-103)

*Charges.*

Charges.

100. Where immoveable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained as to a mortgagor shall, so far as may be, apply to the owner of such property, and the provisions of sections 81 and 82 and all the provisions hereinbefore contained as to a mortgagee instituting a suit for the sale of the mortgaged property shall, so far as may be, apply to the person having such charge.

Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust.

Extinguish-  
ment of  
charges

101. Where the owner of a charge or other incumbrance on immoveable property is or becomes absolutely entitled to that property, the charge or incumbrance shall be extinguished, unless he declares, by express words or necessary implication, that it shall continue to subsist, or such continuance would be for his benefit.

*Notice and Tender.*Service or  
tender on or  
to agent.

102. Where the person on or to whom any notice or tender is to be served or made under this Chapter does not reside in the district in which the mortgaged property or some part thereof is situate, service or tender on or to an agent holding a general power-of-attorney from such person or otherwise duly authorized to accept such service or tender shall be deemed sufficient.

Where the person or agent on whom such notice should be served cannot be found in the said district, or is unknown to the person required to serve the notice, the latter person may apply to any Court in which a suit might be brought for redemption of the mortgaged property, and such Court shall direct in what manner such notice shall be served, and any notice served in compliance with such direction shall be deemed sufficient.

Where the person or agent to whom such tender should be made cannot be found within the said district, or is unknown to the person desiring to make the tender, the latter person may deposit in such Court as last aforesaid the amount sought to be tendered, and such deposit shall have the effect of a tender of such amount.

Notice, etc.,  
to or by

103. Where, under the provisions of this Chapter, a notice is to be served on or by, or a tender or deposit made or accepted or taken out of

(Chapter IV.—Of Mortgages of Immoveable Property and Charges Sec.

104. Chapter V.—Of Leases of Immoveable Property. Secs 105-106)

Court by, any person incompetent to contract<sup>1</sup>, such notice may be served, or tender or deposit made, accepted or taken, by the legal curator of the property of such person; but where there is no such curator, and it is requisite or desirable in the interests of such person that a notice should be served or a tender or deposit made under the provisions of this Chapter, application may be made to any Court in which a suit might be brought for the redemption of the mortgage to appoint a guardian *ad litem* for the purpose of serving or receiving service of such notice, or making or accepting such tender, or making or taking out of Court such deposit, and for the performance of all consequential acts which could or ought to be done by such person if he were competent to contract; and the provisions of Chapter XXXI of the Code of Civil Procedure<sup>2</sup> shall, so far as may be, apply to such application and to the parties thereto and to the guardian appointed thereunder.

person in-  
competent to  
contract

104. The High Court may, from time to time, make rules consistent with this Act for carrying out, in itself and in the Courts of Civil Judicature subject to its superintendence, the provisions contained in this Chapter.

Power to  
make rules.

## CHAPTER V.

### OF LEASES OF IMMOVEABLE PROPERTY

105. A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lease  
defined.

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

Lessor,  
lessee, pre-  
mium and  
rent defined.

106. In the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immoveable property for any other pur-

Duration of  
certain leases  
in absence of  
written con-  
tract or local  
usage

<sup>1</sup> As to persons competent to contract, see ss 11 and 12 of the Indian Contract Act, 1872 (IX of 1872), General Acts, Vol II, Ed 1898, pp 302 and 303

<sup>2</sup> See now Ch XXXI of Act XIV of 1882, printed, *infra*, p 262

## (Chapter V.—Of Leases of Immoveable Property. Secs. 107-108.)

pose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Every notice under this section must be in writing, signed by or on behalf of the person giving it, and tendered or delivered either personally to the party who is intended to be bound by it, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

Leases how  
made.

1107. A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

All other leases of immoveable property may be made either by an instrument or by oral agreement.

Rights and  
liabilities of  
lessor and  
lessee.

108. In the absence of a contract or local usage to the contrary, the lessor and the lessee of immoveable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:—

(a) *Rights and Liabilities of the Lessor.*

(a) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover:

(b) the lessor is bound on the lessee's request to put him in possession of the property:

(c) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption.

The benefit of such contract shall be annexed to and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

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<sup>1</sup> As to limitation to the territorial operation of s. 107, see s 1, *supra*. S. 107 extends to every cantonment in British India, see the Cantonments Act, 1889 (XIII of 1889), s. 32 (1), printed, General Acts, Vol V, Ed. 1898, p. 335.

(b) *Rights and Liabilities of the Lessee.*

(d) If during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease:

(e) if by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void:

Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision.

(f) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor

(g) if the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor:

(h) the lessee may remove, at any time during the continuance of the lease, all things which he has attached to the earth: provided he leaves the property in the state in which he received it.

(i) when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them:

(j) the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease:

nothing in this clause shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee:

## (Chapter V —Of Leases of Immoveable Property Sec 109.)

(k) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the lessee is, and the lessor is not, aware, and which materially increases the value of such interest:

(l) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf:

(m) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give or leave notice of any defect in such condition, and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left:

(n) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor:

(o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own, but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell timber, pull down or damage buildings, work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto;

(p) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes:

(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.

Rights of  
lessor's  
transferred.

109. If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities, of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him.

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such

*(Chapter V.—Of Leases of Immoveable Property. Secs. 110-111.)*

transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.

110. Where the time limited by a lease of immoveable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease.

Exclusion of day on which term commences.

Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences

Duration of lease for a year

Where the time so limited is expressed to be terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such option.

Option to determine lease

111. A lease of immoveable property determines—

Determination of lease.

(a) by efflux of the time limited thereby:

(b) where such time is limited conditionally on the happening of some event—by the happening of such event:

(c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event:

(d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right:

(e) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them:

(f) by implied surrender:

(g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter or the lease shall become void, or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself, and in either case the lessor or his transferee does some act showing his intention to determine the lease:

## (Chapter V—Of Leases of Immoveable Property. Secs 112-115.)

(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

*Illustration to Clause (f).*

A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.

Waiver of  
forfeiture

112. A forfeiture under section 111, clause (g), is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting:

Provided that the lessor is aware that the forfeiture has been incurred:

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.

Waiver of  
notice to  
quit

113. A notice given under section 111, clause (h), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting.

*Illustrations.*

(a) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires. B tenders, and A accepts, rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(b) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires, and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.

Relief against  
forfeiture for  
non-payment  
of rent

114. Where a lease of immoveable property has determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture, and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

Effect of  
surrender  
and for-  
feiture on  
under-leases

115. The surrender, express or implied, of a lease of immoveable property does not prejudice an under-lease of the property or any part thereof previously granted by the lessee, on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease; but, unless the surrender is made for the purpose of obtaining a new lease,

(Chapter V —Of Leases of Immoveable Property Secs 116-117. Chapter VI.—Of Exchanges. Secs. 118-119)

the rent payable by, and the contracts binding on, the under-lessee shall be respectively payable to and enforceable by the lessor

The forfeiture of such a lease annuls all such under-leases, except where such forfeiture has been procured by the lessor in fraud of the under-lessees, or relief against the forfeiture is granted under section 114.

116. If a lessee or under-lessee of property remains in possession there- Effect of holding over.  
of after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106.

*Illustrations.*

(a) A lets a house to B for five years B underlets the house to C at a monthly rent of Rs. 100 The five years expire, but C continues in possession of the house and pays the rent to A C's lease is renewed from month to month.

(b) A lets a farm to B for the life of C C dies, but B continues in possession with A's assent B's lease is renewed from year to year.

117. None of the provisions of this Chapter apply to leases for agricultural purposes, except in so far as the Local Government, with the previous sanction of the Governor General in Council, may by notification published in the local official Gazette declare all or any of such provisions to be so applicable, together with, or subject to, those of the local law, if any, for the time being in force. Exemption of leases for agricultural purposes.

Such notification shall not take effect until the expiry of six months from the date of its publication.

## CHAPTER VI.

### OF EXCHANGES.

118. When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an "exchange." "Exchange" defined.

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

119. In the absence of a contract to the contrary, the party deprived of the thing or part thereof he has received in exchange, by reason of any defect in the title of the other party, is entitled at his option to compensation or to the return of the thing transferred by him. Right of party deprived of thing received in exchange.

(Chapter VI.—Of Exchanges. Secs. 120-121. Chapter VII.—Of Gifts. Secs. 122-126.)

Rights and liabilities of parties.

120. Save as otherwise provided in this Chapter, each party has the rights and is subject to the liabilities of a seller as to that which he gives, and has the rights and is subject to the liabilities of a buyer as to that which he takes.

Exchange of money.

121. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

## CHAPTER VII.

### OF GIFTS.

"Gift" defined

122. "Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Acceptance when to be made

Such acceptance must be made during the lifetime of the donor and while he is still capable of giving.

Transfer how effected

If the donee dies before acceptance, the gift is void

123. For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery

Such delivery may be made in the same way as goods sold may be delivered.

Gift of existing and future property  
Gift to several, of whom one does not accept.  
When gift may be suspended or revoked

124. A gift comprising both existing and future property is void as to the latter.

125. A gift of a thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted.

126. The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part at the mere will of the donor is void wholly or in part, as the case may be.

(1) As to limitation to the territorial operation of s 123, see s 1, *supra*. S 123 extends to every cantonment in British India, see the Cantonments Act, 1889 (XIII of 1889), s 32 (1), printed, General Acts, Vol V, Ed 1898, p 335

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

*Illustrations.*

(a) A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants die before A. B dies without descendants in A's lifetime. A may take back the field.

(b) A gives a lakh of rupees to B, reserving to himself, with B's assent, the right to take back at pleasure Rs 10,000 out of the lakh. The gift holds good as to Rs 90,000, but is void as to Rs 10,000, which continue to belong to A.

**127.** Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not, burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully. Onerous gifts.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

A donee not competent to contract and accepting property burdened by any obligation is not bound by his acceptance. But if, after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound. Onerous gift to disqualified person.

*Illustrations*

(a) A has shares in X, a prosperous joint stock company, and also shares in Y, a joint stock company in difficulties. Heavy calls are expected in respect of the shares in Y. A gives B all his shares in joint stock companies. B refuses to accept the shares in Y. He cannot take the shares in X.

(b) A having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is more than the house can be let for, gives to B the lease, and also, as a separate and independent transaction, a sum of money. B refuses to accept the lease. He does not by this refusal forfeit the money.

**128.** Subject to the provisions of section 127, where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by the donor at the time of the gift to the extent of the property comprised therein. Universal donee.

**129.** Nothing in this Chapter relates to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Muham- Saving of donations

(Chapter VIII.—Of Transfers of Actionable Claims. Secs. 130-135)

mortis causa  
and Muham-  
madan law.

madan law, or, save as provided by section 123, any rule of Hindú or Buddhist law.

## CHAPTER VIII.

### OF TRANSFERS OF ACTIONABLE CLAIMS.

"Actionable  
claim" de-  
fined

**130.** A claim which the Civil Courts recognise as affording grounds for relief is actionable whether a suit for its enforcement is or is not actually pending or likely to become necessary.

Transfer of  
debts

**131.** No transfer of any debt or any beneficial interest in moveable property shall have any operation against the debtor or against the person in whom the property is vested, until express notice of the transfer is given to him, unless he is a party to or otherwise aware of such transfer; and every dealing by such debtor or person, not being a party to or otherwise aware of, and not having received express notice of, a transfer, with the debt or property shall be valid as against such transfer

#### *Illustration.*

A owes money to B, who transfers the debt to C. B then demands the debt from A, who, having no notice of the transfer, pays B. The payment is valid, and C cannot sue A for the debt.

Notice to be  
in writing  
signed

**132.** Every such notice must be in writing signed by the person making the transfer, or by his agent duly authorized in this behalf.

Debtor to  
give effect to  
transfer.

**133.** On receiving such notice, the debtor or person in whom the property is vested shall give effect to the transfer unless where the debtor resides, or the property is situate, in a foreign country and the title of the person in whose favour the transfer is made is not complete according to the law of such country.

Warranty of  
solvency of  
debtor.

**134.** Where the transferor of a debt warrants the solvency of the debtor, the warranty, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer, and is limited, where the transfer is made for consideration, to the amount or value of such consideration.

Discharge of  
person  
against  
whom claim  
is sold

**135.** Where an actionable claim is sold, he against whom it is made is wholly discharged by paying to the buyer the price and incidental expenses of the sale, with interest on the price from the day that the buyer paid it.

Nothing in the former part of this section applies—

(a) where the sale is made to the co-heir to, or co-proprietor of, the claim sold;

(Chapter VIII.—Of Transfers of Actionable Claims. Secs. 136-139.  
The Schedule)

- (b) where it is made to a creditor in payment of what is due to him;
- (c) where it is made to the possessor of a property subject to the actionable claim;
- (d) where the judgment of a competent Court has been delivered affirming the claim, or where the claim has been made clear by evidence and is ready for judgment

136. No judge, pleader, mukhtar, clerk, bailiff or other officer connected with Courts of Justice can buy any actionable claim falling under the jurisdiction of the Court in which he exercises his functions.

Incapacity of officers connected with Courts of Justice  
Liability of transferee of debt

137. The person to whom a debt or charge is transferred shall take it subject to all the liabilities to which the transferor was subject in respect thereof at the date of the transfer.

*Illustration.*

A debenture is issued in fraud of a public company to A. A sells and transfers the debenture to B, who has no notice of the fraud. The debenture is invalid in the hands of B.

138. When a debt is transferred for the purpose of securing an existing or future debt, the debt so transferred, if recovered by either the transferor or transferee, is applicable, first, in payment of the costs of such recovery; secondly, in or towards satisfaction of the amount for the time being secured by the transfer; and the residue, if any, belongs to the transferor

Mortgaged debt.

139. Nothing in this Chapter applies to negotiable instruments.

Saving of negotiable instruments.

THE SCHEDULE.

Year and Chapter.	Subject.	Extent of repeal
(a) STATUTES.		
27 Hen. VIII, c. 10.	Uses . . . . .	The whole.
13 Eliz., c. 5 . . . .	Fraudulent conveyances . . . .	The whole.
27 Eliz., c. 4 . . . .	Fraudulent conveyances . . . .	The whole.
4 Wm. & Mary, c. 16 .	Clandestine mortgages . . . . .	The whole.

## SCHEDULE—concluded.

Number and year.	Subject	Extent of repeal.
(b) ACTS OF THE GOVERNOR GENERAL IN COUNCIL.		
IX of 1842 . . .	Lease and release . . .	The whole.
XXXI of 1854 . . .	Modes of conveying land . . .	Section 17
XI of 1855 . . .	Mesne profits and improvements . . .	Section 1, in the title, the words "to mesne profits and", and in the preamble "to limit the liability for mesne profits and".
XXVII of 1866 . . .	Indian Trustee Act . . .	Section 31.
IV of 1872 . . .	Punjab Laws Act . . .	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806.
XX of 1875 . . .	Central Provinces Laws Act . . .	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806.
XVIII of 1876 . . .	Oudh Laws Act . . .	So far as it relates to Bengal Regulation XVII of 1806.
I of 1877 . . .	Specific Relief . . .	In sections 35 and 36 the words "in writing"
(c) REGULATIONS		
Bengal Regulation I of 1798.	Conditional sales . . .	The whole Regulation.
Bengal Regulation XVII of 1806.	Redemption . . .	The whole Regulation.
Bombay Regulation V of 1827.	Acknowledgment of debts; interest; mortgagees in possession.	Section 15.

## THE INDIAN COMPANIES ACT, 1882.

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CONTENTS.

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## PREAMBLE.

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PRELIMINARY.

## SECTIONS.

1. Short title.  
Local extent.  
Commencement.
  2. Repeal of Act X of 1866.
  - 3 Interpretation-clause
  - 4 Prohibition of partnerships exceeding certain number.
  5. Division of Act
- 

## PART I.

CONSTITUTION AND INCORPORATION OF COMPANIES AND ASSOCIATIONS  
UNDER THIS ACT.*Memorandum of Association.*

6. Mode of forming Company.
7. Mode of limiting liability of members.  
Directors with unlimited liability.
8. Memorandum of association of a Company limited by shares
9. Memorandum of association of a Company limited by guarantee.
10. Memorandum of association of an unlimited Company
- 11 Signature and effect of memorandum of association
12. Power of certain Companies to alter memorandum of association.

*Reduction of Capital and Shares.*

13. Power to Company to reduce capital
14. Company to add "and reduced" to its name for a limited period.
15. Company to apply to the Court for an order confirming reduction.
- 16 Creditors may object to reduction, and list of objecting creditors to  
be settled by Court
17. Court may dispense with consent of creditor on security being given  
for his debt
18. Order and minute to be registered
19. Minute to form part of memorandum of association.
20. Saving of rights of creditors who are ignorant of proceedings.
21. Registered minute to be embodied in memorandum of association.
22. Penalty on concealment of name of creditor
23. Power to reduce capital by cancellation of unissued shares.

*Sub-division of Shares.*

## SECTIONS.

- 24 Shares may be divided into shares of smaller amount
- 25. Special resolution to be embodied in memorandum of association.

*Associations not for Profit.*

- 26. Special provisions as to associations formed for purposes not of gain.

*Calls upon Shares.*

- 27. Company may have some shares fully paid, and others not.
- 28 Manner in which shares are to be issued and held.

*Transfer of Shares*

- 29 Transfer may be registered at request of transferor.

*Share-warrants to Bearer.*

- 30. Warrant of limited shares fully paid up may be issued in name of bearer.  
Coupons.
- 31. Effect of share-warrant.
- 32 Re-registration of bearer of a share-warrant in the register.
- 33. Regulations of the Company may make the bearer of a share-warrant a member.
- 34 Entries in register where share-warrant issued.
- 35. Stamps on share-warrants  
Penalty for issuing share-warrant not duly stamped.

*Change of Name.*

- 36. Power of Companies to change name.

*Articles of Association.*

- 37. Regulations to be prescribed by articles of association.
- 38. Application of table A
- 39. Signature and effect of articles of association.

*General Provisions.*

- 40. Registration of memorandum of association and articles of association with fees as in tables B and C.
- 41. Effect of registration.
- 42. Copies of memorandum and articles to be given to members.
- 43. Prohibition against identity of names in Companies.

## PART II.

DISTRIBUTION OF CAPITAL AND LIABILITY OF MEMBERS OF COMPANIES AND  
ASSOCIATIONS UNDER THIS ACT.*Distribution of Capital.*

## SECTIONS.

- 44 Nature of interest in Company
- 45 Definition of "member"
- 46 Transfer by personal representative.
- 47 Register of members.
- 48 Annual list of members
- 49 Particulars to be contained in annual summary
- 50 Penalty on Company, etc, not keeping a proper register
- 51. Company to give notice of consolidation or of conversion of capital  
into stock
- 52. Effect of conversion of shares into stock.
- 53 Entry of trusts on register.
- 54 Certificate of shares or stock.
- 55. Inspection of register.
- 56 Power to close register.
- 57. Notice of increase of capital and of members to be given to Regis-  
trar
- 58 Remedy for improper entry or omission of entry in register.
- 59 Notice to Registrar of rectification of register
- 60. Register to be evidence.

*Liability of Members.*

- 61. Liability of present and past members of Company
- 62. Liability of director whose liability is unlimited

## PART III.

MANAGEMENT AND ADMINISTRATION OF COMPANIES AND ASSOCIATIONS  
UNDER THIS ACT*Provisions for Protection of Creditors.*

- 63 Registered office of Company.
- 64. Notice of situation of registered office.
- 65 Publication of name by a limited Company.
- 66. Penalties on non-publication of name

*Contracts*

- 67 Contracts how made
- 68 Register of mortgages
- 69 Certain Companies to publish statement entered in schedule.
- 70 List of directors to be sent to Registrar,

## SECTIONS.

- 71. Penalty on Company not keeping register of directors.
- 72. Promissory notes, bills of exchange and hundis.
- 73. Prohibition against carrying on business with less than seven members.

*Provisions for Protection of Members.*

- 74. General meeting of Company.  
Balance-sheet.  
Audit.

*Meetings.*

- 75. Company to hold meeting within six months after registration.
- 76. Power to alter regulations by special resolution.  
Power to make liability of directors unlimited.
- 77. Definition of "special resolution"
- 78. Provision where no regulations as to meetings.
- 79. Registration of special resolutions.
- 80. Copies of special resolutions to be embodied in articles of association.
- 81. Execution of deeds abroad.
- 82. Examination of affairs of Company by inspectors.
- 83. Application for inspection to be supported by evidence.
- 84. Inspection of books.
- 85. Result of examination how dealt with
- 86. Power of Company to appoint inspectors
- 87. Report of inspectors to be evidence.
- 88. Prospectus, etc, to specify dates and names of parties to certain prior contracts.

*Notices.*

- 89. Service of notices on Company.
- 90. Rules as to notices by letter
- 91. Authentication of notices by Company.

*Legal Proceedings.*

- 92. Evidence of proceedings at meetings.
- 93. Provision as to costs in suits brought by certain limited Companies.
- 94. Plaint in suits against members.

*Alteration of Forms.*

- 95. Forms to be used.  
Governor General in Council may alter forms.

*Arbitrations.*

## SECTIONS.

96. Power for Companies to refer matters to arbitration.
97. Power to alter or revoke agreements for reference.
98. Agreements to be carried into effect.
99. Reference to arbitrator.
100. Reference to two or more arbitrators
101. Appointment of arbitrators by Companies.
102. Appointment of arbitrators by Local Government
103. Appointment of arbitrators by Companies to supply vacancies.
104. Appointment of arbitrators by Local Government to supply vacancies.
105. Appointment of arbitrator not revocable.
106. Appointment of umpire by arbitrators.
107. Appointment of umpire by Local Government.
108. Appointment of umpire by arbitrators to supply vacancy
109. Appointment of umpire by Local Government to supply vacancy.
110. Succeeding arbitrators and umpires to have powers of predecessors.
111. Reference to umpire.
112. Power for arbitrators, etc, to call for books, etc., and examine witnesses on oath.
113. Procedure in the arbitration
114. Arbitration may proceed in absence of Companies.
115. Several awards may be made.
116. Awards made in due time to bind all parties.
117. Power for umpire to extend period for making his award.
118. Awards not to be set aside for informality.
119. Awards to be obeyed.
120. Agreements, arbitrations and awards to have effect
121. Costs of arbitration and award
122. Payment of costs
123. Submission to arbitration to be filed in Court

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PART IV.

## WINDING-UP OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

*Preliminary.*

124. Meaning of "contributory."
125. Nature of liability of contributory.
126. Contributories in case of death
127. Contributories in case of insolvency.

*Winding-up by Court*

128. Circumstances under which Company may be wound up by Court.
129. Company when deemed unable to pay its debts.
130. Definition of "the Court."  
Definition of "debts."

## SECTIONS.

- 131. Application for winding-up to be made by petition.
- 132. Contributory when not qualified to present winding-up petition.
- 133. Commencement of winding-up by Court.
- 134. Court may grant injunction
- 135. Course to be pursued by Court on hearing petition.
- 136. Suits to be stayed after order for winding-up.
- 137. Copy of order to be forwarded to Registrar.
- 138. Power of Court to stay proceedings.
- 139. Effect of order on share-capital of Company limited by guarantee.
- 140. Court may have regard to wishes of creditors or contributories.

*Official Liquidators.*

- 141. Appointment of official liquidator
- 142. Resignations, removals, filling up vacancies, and compensation.
- 143. Style and duties of official liquidator.
- 144. Powers of official liquidator.
- 145. Discretion of official liquidator
- 146. Appointment of attorney or vakil to official liquidator.

*Ordinary Powers of Court.*

- 147. Collection and application of assets.
- 148. Provision as to representative contributories.
- 149. Power of Court to require delivery of property.
- 150. Power of Court to order payment of debts by contributory.
- 151. Power of Court to make calls.
- 152. Power of Court to order payment into Bank.
- 153. Regulation of account with Court
- 154. Provision in case of representative contributory not paying moneys ordered
- 155. Order conclusive evidence.
- 156. Court may exclude creditors not proving within certain time.
- 157. Court to adjust rights of contributories.
- 158. Court to order costs.
- 159. Dissolution of Company
- 160. Registrar to make minute of dissolution of Company.
- 161. Penalty for not reporting dissolution of Company.

*Extraordinary Powers of Court.*

- 162. Power of Court to summon persons before it suspected of having property of Company
- 163. Examination of parties by Court
- 164. Power to arrest contributory about to abscond or to remove or conceal any of his property
- 165. Powers of Court cumulative.

*Enforcement of, and Appeal from, Orders.*

## SECTIONS.

- 166. Power to enforce orders.
- 167. Order made in any Court to be enforced by other Courts.
- 168. Mode of dealing with orders to be enforced by other Courts.
- 169. Appeals from orders.
- 170. Judicial notice to be taken of signature of officers.
- 171. Special Commissioners for receiving evidence.
- 172. Affidavits, etc., may be sworn in British India, Great Britain or Ireland or abroad, before any competent Court or person.

*Voluntary winding-up of Company.*

- 173. Circumstances under which Company may be wound up voluntarily.
- 174. Commencement of voluntary winding-up
- 175. Effect of voluntary winding-up on status of Company.
- 176. Notice of resolution to wind up voluntarily.
- 177. Consequence of voluntary winding-up
- 178. Effect of winding-up on share-capital of Company limited by guarantee.
- 179. Power of Company to delegate authority to appoint liquidators.
- 180. Arrangement when binding on creditors.
- 181. Power of creditor or contributory to appeal
- 182. Power for liquidators or contributories in voluntary winding-up to apply to Court.
- 183. Power of liquidators to call general meeting.
- 184. Power to fill up vacancy in office of liquidators.
- 185. Power of Court to appoint liquidators.
- 186. Liquidators on conclusion of winding-up to make up an account.
- 187. Liquidators to report meeting to Registrar.
- 188. Costs of voluntary liquidation.
- 189. Saving of rights of creditors.
- 190. Power of Court to adopt proceedings of voluntary winding-up.

*Winding-up subject to the Supervision of the Court.*

- 191. Power of Court, on application, to direct winding-up subject to supervision.
- 192. Petition for winding-up subject to supervision.
- 193. Court may have regard to wishes of creditors
- 194. Power to Court to appoint additional liquidator in winding-up subject to supervision.
- 195. Effect of order of Court for winding-up subject to supervision.
- 196. Appointment in certain cases of voluntary liquidators to office of official liquidators.

*Supplemental Provisions*

## SECTIONS.

197. Dispositions after commencement of winding-up avoided.
198. Books of Company to be evidence.
199. Disposal of books, accounts and documents of Company.
200. Inspection of books.
- 200A. Priority of debts.
201. General scheme of liquidation may be sanctioned
202. Power to compromise.
203. Where compromise proposed, Court may order a meeting of creditors, etc., to decide as to such compromise.
204. Power for liquidators to accept shares, etc., as a consideration for sale of property of Company
205. Mode of determining price
206. Appointment of arbitrator when questions are to be determined by arbitration.
207. Vacancy of arbitrator to be supplied.
208. Appointment of umpire
209. Power of arbitrators to call for books, etc.
210. Costs to be in discretion of arbitrators.
211. Submission to arbitration may be filed in Court
212. Certain attachments, distresses and executions to be void
213. Fraudulent preference.
214. Power of Court to assess damages against delinquent directors and officers.
215. Penalty on falsification of books.
216. Prosecution of delinquent directors in case of winding-up by Court.
217. Penalty for false evidence.
218. Winding-up may be referred to District Court.
219. Transfer of winding-up from one District Court to another.

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PART V.

## REGISTRATION-OFFICE.

220. Constitution of registration-office.

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PART VI

## APPLICATION OF ACT TO COMPANIES REGISTERED UNDER THE JOINT-STOCK COMPANIES ACTS.

221. Application of Act to Companies formed under Act XIX of 1857 or VII of 1860.
222. Application of Act to Companies registered under Act XIX of 1857 or VII of 1860
223. Mode of transferring shares.

## PART VII.

## COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT.

## SECTIONS.

- 224. Companies capable of being registered.
- 225. Regulations as to registration of existing Companies.
- 226. Definition of "joint-stock Company"
- 227. Requisitions for registration by Companies.
- 228. Requisitions for registration by existing Company not being a joint-stock Company
- 229. Power for existing Company to register amount of stock instead of shares.
- 230. Authentication of statements of existing Companies
- 231. Registrar may require evidence as to nature of Company
- 232. On registration of banking Company with limited liability, notice to be given to customers.
- 233. Exemption of certain Companies from payment of fees.
- 234. Company to change name.
- 235. Certificate of registration of existing Companies.
- 236. Certificate to be evidence of compliance with Act.
- 237. Transfer of property to Company.
- 238. Registration under this Act not to affect obligations incurred previously to registration
- 239. Continuation of existing suits.
- 240. Effect of registration under Act
- 241. Power of Court to restrain further proceedings.
- 242. Order for winding-up Company.

## PART VIII.

## APPLICATION OF ACT TO UNREGISTERED COMPANIES.

- 243. Winding-up unregistered Companies.
- 244. Who to be deemed a contributory in the event of Company being wound up.
- 245. Power of Court to restrain further proceedings.
- 246. Effect of order for winding-up Company.
- 247. Provision in case of unregistered Company.
- 248. Provisions of this Part of Act cumulative.

## PART IX.

## MISCELLANEOUS PROVISIONS.

- 249. Company not to buy its own shares.
- 250. Saving of existing proceedings for winding-up.
- 251. Saving of conveyances.
- 252. Cognizance of offences.  
Punishment of offences committed within Presidency-towns

## SECTIONS.

253. Power to make orders as to costs.  
 254. Power of High Court to make rules.  
 255. Construction of "Registrar of Joint-Stock Companies" in Act XXI of 1860  
 256. Act not to apply to Bank of Bengal, Madras or Bombay.

## FIRST SCHEDULE.—TABLES.

## SECOND SCHEDULE —FORMS.

## APPENDIX.—TABLE B IN SCHEDULE TO ACT XIX OF 1857.

ACT No. VI OF 1882<sup>1</sup>.

[24th February, 1882.]

An Act for the incorporation, regulation and winding-up of  
 Trading Companies and other Associations.

Preamble. WHEREAS it is expedient to amend the law relating to the incorporation, regulation and winding-up of Trading Companies and other Associations; It is hereby enacted as follows.—

## PRELIMINARY.

- Short title. 1. This Act may be cited as the Indian Companies Act, 1882.
- Local extent. It extends to the whole of British India.
- Commence-  
ment. It shall come into force on the first day of May, 1882; and the time at which it comes into force is hereinafter referred to as the commencement of this Act.
- Repeal of  
Act X of  
1866. 2. On and from the commencement of this Act, the Indian Companies Act, 1866, shall be repealed. But such repeal shall not affect— X of
- (a) the incorporation of any Company registered under the said Act or any Act thereby repealed;
- (b) any right or privilege acquired, or liability incurred, under the said Act or any Act thereby repealed;

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1881, Pt V, p 1275; for Proceedings in Council, see *ibid*, 1881, Supplement, pp 932 and 1100, and *ibid*, 1882, Supplement, p 203

Act VI of 1882 has been declared in force in Upper Burma generally (except the Shan States), by the Upper Burma Laws Act, 1886 (XX of 1886), s 6, see now s 4 (1) of the Burma Laws Act, 1898 (XIII of 1898), by which Act XX of 1886, has been repealed

It has been extended, under s 5 of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol II, p 467, to British Baluchistan, see Gazette of India, 1895, Pt II, p 9

Ss 3 to 10 of the Indian Companies (Memorandum of Association) Act, 1895 (XII of 1895), [Printed, General Acts, Vol VI] are to be read with and taken as part of the Act of 1882

The Act is to a great extent a re-enactment of the Indian Companies Act, 1866 (X of 1866) That Act was based chiefly on the Companies Act, 1862 (25 & 26 Vict, c 89).

(c) table B<sup>1</sup> in the schedule annexed to Act No XIX of 1857<sup>2</sup> or any part thereof, so far as the same applies to any Company existing at the time of the commencement of this Act.

x of 1866.

And all references to the said Indian Companies Act, 1866<sup>3</sup>, in Acts or Regulations passed before the commencement of this Act shall be read as if made to this Act; and all rules made, fees directed, resolutions passed and other things duly done under the same Act shall be deemed to be respectively made, directed, passed and done under this Act; and all Companies under the same Act shall be deemed to be Companies under this Act.

3. In this Act, unless there be something repugnant in the subject or context,— Interpretation-clause.

“Insurance Company” means a Company that carries on the business of insurance either solely or in common with any other business or businesses;

“Court” means the principal Civil Court of original jurisdiction in a district, and includes the High Court in the exercise of its ordinary original civil jurisdiction;

“District Court” means the principal Civil Court of original jurisdiction in a district, but does not include the High Court in the exercise of its ordinary original civil jurisdiction.

4. No Company, Association or Partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a Company under this Act, or is formed in pursuance of an Act of Parliament or some other Act of the Governor General in Council, or by Royal Charter or Letters Patent; and no Company, Association or Partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the Company, Association or Partnership, or by the individual members thereof, unless it is registered as a Company under this Act, or is formed in pursuance of some other Act or of Letters Patent. Prohibition of partnerships exceeding certain number.

5. This Act is divided into nine Parts, relating to the following subject-matters:— Division of Act.

The first Part—to the constitution and incorporation of Companies and Associations under this Act ;

<sup>1</sup> Printed, *infra*, Appendix, p 205.

<sup>2</sup> Act XIX of 1857 was repealed by Act X of 1866, s 219

<sup>3</sup> Act X of 1866 was repealed by s 2 of this Act

(Part I.—Constitution and Incorporation of Companies and Associations under this Act. Secs. 6-7)

The second Part—to the distribution of the capital and liability of members of Companies and Associations under this Act ;

The third Part—to the management and administration of Companies and Associations under this Act ;

The fourth Part—to the winding-up of Companies and Associations under this Act ;

The fifth Part—to the registration-office

The sixth Part—to the application of this Act to Companies registered under Act No. XIX of 1857<sup>1</sup> (*for the incorporation and regulation of Joint-Stock Companies and other Associations, either with or without limited liability of the members thereof*), and Act No. VII of 1860<sup>1</sup> (*to enable Joint-Stock Banking Companies to be formed on the principle of limited liability*), or either of them ;

The seventh Part—to Companies authorized to register under this Act ;

The eighth Part—to the application of this Act to unregistered Companies ;

The ninth Part—to miscellaneous provisions.

## PART I.

### CONSTITUTION AND INCORPORATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT

#### *Memorandum of Association.*

Mode of  
forming  
Company.

6. Any seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requisitions of this Act in respect of registration, form an incorporated Company, with or without limited liability.

*Explanation.*—Foreigners are persons within the meaning of this section, although the whole or any part of the business of the proposed Company is intended to be transacted out of British India.

Mode of  
limiting li-  
ability of  
members

7. The liability of the members of a Company formed under this Act may, according to the memorandum of association, be limited either to the amount, if any, unpaid on the shares respectively held by them, or to such

<sup>1</sup> Act XIX of 1857 and Act VII of 1860 were repealed by Act X of 1866, s. 219 Table B in the Schedule to Act XIX of 1857, however, remains in force (*see* s. 2 (c), *supra*) It is printed, *infra*, Appendix, p. 205.

(Part I.—*Constitution and Incorporation of Companies and Associations under this Act. Secs. 8-9*)

amount as the members may respectively undertake by the memorandum of association to contribute to the assets of the Company in the event of its being wound up

<sup>1</sup> Where a Company is formed as a Limited Company, the liability of the directors or managers of such Company, or of the managing director, may, if so provided by the memorandum of association, be unlimited.

Directors  
with un-  
limited lia-  
bility

8. Where a Company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares, hereinafter referred to as a Company limited by shares, the memorandum of association shall contain the following things (that is to say):—

Memoran-  
dum of asso-  
ciation of a  
Company  
limited by  
shares

- (a) the name of the proposed Company with the addition of the word “limited” as the last word in such name;
- (b) the part of British India in which the registered office of the Company is proposed to be situate;
- (c) the objects for which the proposed Company is to be established;
- (d) a declaration that the liability of the members is limited;
- (e) the amount of capital with which the Company proposes to be registered divided into shares of a certain fixed amount:

Subject to the following regulations:—

- (f) that no subscriber shall take less than one share;
- (g) that each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes

9. Where a Company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the Company in the event of the same being wound up (hereinafter referred to as a Company limited by guarantee), the memorandum of association shall contain the following things (that is to say):—

Memoran-  
dum of asso-  
ciation of a  
Company  
limited by  
guarantee.

- (a) the name of the proposed Company, with the addition of the word “limited” as the last word in such name;
- (b) the part of British India in which the registered office of the Company is proposed to be situate;
- (c) the objects for which the proposed Company is to be established;
- (d) a declaration that each member undertakes to contribute to the assets of the Company, in the event of the same being wound up during the time that he is a member, or within one year

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<sup>1</sup> Cf. s. 4 of the Companies Act, 1867 (30 & 31 Vict., c. 131).

(Part I.—*Constitution and Incorporation of Companies and Associations under this Act. Secs. 10-13*)

afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and of the costs, charges and expenses of winding-up the Company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount.

Memorandum of association of an unlimited Company.

10. Where a Company is formed on the principle of having no limit placed on the liability of its members (hereinafter referred to as an unlimited Company), the memorandum of association shall contain the following things (that is to say) :—

- (a) the name of the proposed Company;
- (b) the part of British India in which the registered office of the Company is proposed to be situate ;
- (c) the objects for which the proposed Company is to be established.

Signature and effect of memorandum of association

11. The memorandum of association shall be signed by each subscriber in the presence of, and be attested by, one witness at the least. It shall, when registered, bind the Company and the members thereof to the same extent as if each member had subscribed his name thereto, and there were in the memorandum contained, on the part of himself, his heirs, executors and administrators, a contract to observe all the conditions of such memorandum subject to the provisions of this Act.

Power of certain Companies to alter memorandum of association

12. Any Company limited by shares may so far modify the conditions contained in its memorandum of association, if authorized to do so by its regulations as originally framed, or as altered by special resolution in manner hereinafter mentioned, as to increase its capital, by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid-up shares into stock ; but, save as aforesaid, and save as hereinafter provided, no alteration shall be made by any Company in the conditions contained in its memorandum of association

*Reduction of Capital and Shares.*<sup>1</sup>

Power to Company to reduce capital.

13. Any Company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed, or as altered by special resolution, as to reduce its capital ; but no such resolution for reducing the capital of any Company shall come into operation until an order of the

<sup>1</sup> Cf. ss 9 to 19 of the Companies Act, 1867 (30 & 31 Vict, c 131)

(Part I.—*Constitution and Incorporation of Companies and Associations under this Act. Secs. 14-15.*)

Court is registered by the Registrar of Joint-Stock Companies, as is herein-after mentioned.

<sup>1</sup> *Explanation I.*—The word “capital” includes paid-up capital.

<sup>1</sup> *Explanation II.*—The power to reduce capital conferred by this section includes a power to cancel any lost capital, or any capital unrepresented by available assets, or to pay off any capital which may be in excess of the wants of the Company; and paid-up capital may be reduced either with or without extinguishing or reducing the liability (if any) remaining on the shares of the Company, and, to the extent to which such liability is not extinguished or reduced, it shall be deemed to be preserved, notwithstanding anything hereinafter contained.

14. The Company shall, after the date of the passing of any special resolution for reducing its capital, add to its name, until such date as the Court may fix, the words “and reduced,” as the last words in its name, and those words shall, until such date, be deemed to be part of the name of the Company.

Company to add “and reduced” to its name for a limited period.

15. A Company which has passed a special resolution for reducing its capital may apply to the Court by petition for an order confirming the reduction, and, on the hearing of the petition, the Court, if satisfied that, with respect to every creditor of the Company who, under the provisions of this Act, is entitled to object to the reduction, either his consent to the reduction has been obtained, or his debt or claim has been discharged or has been determined, or has been secured as hereinafter provided, may make an order confirming the reduction on such terms and subject to such conditions as it deems fit.

Company to apply to the Court for an order confirming reduction.

<sup>2</sup> When the reduction does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital, the creditors of the Company shall not, unless the Court otherwise directs, be entitled to object, or required to consent, to the reduction; and it shall not be necessary, before the presentation of any petition under this section, to add, and the Court may, if it thinks fit so to do, dispense with the addition of, the words “and reduced,” as mentioned in section 14.

<sup>2</sup> In any case that the Court thinks fit so to do, it may require the Company to publish, in such manner as the Court thinks fit, the reasons for the reduction or such other information regarding the same as the Court may think expedient with a view to give proper information to the public in

<sup>1</sup> Cf s 3 of the Companies Act, 1877 (40 & 41 Vict, c 26)

<sup>2</sup> Cf s. 4 of the Companies Act, 1877 (40 & 41 Vict, c 26)

(Part I.—*Constitution and Incorporation of Companies and Associations under this Act. Secs. 16-17.*)

relation to such reduction, and, if the Court thinks fit, the cause which led thereto.

Creditors may object to reduction and list of objecting creditors to be settled by Court

16. Where a Company proposes to reduce its capital, every creditor of the Company who, at the date fixed by the Court, is entitled to any debt or claim which, if that date were the commencement of the winding-up of the Company, would be admissible in proof against the Company, shall be entitled to object to the proposed reduction, and to be entered in the list of creditors who are so entitled to object.

The Court shall settle a list of such creditors, and for that purpose shall ascertain, as far as possible, without requiring an application from any creditor, the names of such creditors and the nature and amount of their debts or claims, and may publish notices fixing a certain day or days within which creditors of the Company who are not entered on the list are to claim to be so entered, or to be excluded from the right of objecting to the proposed reduction.

<sup>1</sup> Provided that, when the reduction does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital, the creditors of the Company shall not, unless the Court otherwise directs, be entitled to object, or required to consent, to the reduction

Court may dispense with creditor on consent of security being given for his debt

17. When a creditor whose name is entered on the list of creditors, and whose debt or claim is not discharged or determined, does not consent to the proposed reduction, the Court may (if it thinks fit) dispense with such consent on the Company securing the payment of the debt or claim of such creditor by setting apart and appropriating, in such manner as the Court may direct, a sum of such amount as is hereinafter mentioned (that is to say):—

- (a) If the full amount of the debt or claim of the creditor is admitted by the Company, or, though not admitted, is such as the Company are willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated;
- (b) If the full amount of the debt or claim of the creditor is not admitted by the Company, and is not such as the Company are willing to set apart and appropriate, or if the amount is contingent or not ascertained, then the Court may, if it thinks fit, inquire into and adjudicate upon the validity of such debt or claim, and the

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<sup>1</sup> Cf s. 4 of the Companies Act, 1877 (40 & 41 Vict., c. 26)

(Part I.—*Constitution and Incorporation of Companies and Associations under this Act Secs 18-20*)

amount for which the Company may be liable in respect thereof, in the same manner as if the Company were being wound up by the Court; and the amount fixed by the Court on such enquiry and adjudication shall be set apart and appropriated.

18. The Registrar of Joint-Stock Companies, upon the production to him of an order of the Court confirming the reduction of the capital of a Company, and the delivery to him of a copy of the order and of a minute (approved by the Court), showing, with respect to the capital of the Company, as altered by the order, the amount of such capital, the number of shares in which it is to be divided, and the amount of each share, and the amount (if any) at the date of the registration of the minute proposed to be deemed to have been paid up on each share,<sup>1</sup> shall register the order and minute; and, on the registration, the special resolution confirmed by the order so registered shall take effect.

Order and minute to be registered.

Notice of such registration shall be published in such manner as the Court may direct

The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requisitions of this Act, with respect to the reduction of capital, have been complied with, and that the capital of the Company is such as is stated in the minute

19. The minute, when registered, shall be deemed to be substituted for the corresponding part of the memorandum of association of the Company, and shall be of the same validity, and subject to the same alterations, as if it had been originally contained in the memorandum of association; and, subject as in this Act mentioned, no member of the Company, whether past or present, shall be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount which has been paid on such share and the amount of the share as fixed by the minute.

Minute to form part of memorandum of association.

20. If any creditor who is entitled in respect of any debt or claim to object to the reduction of the capital of a Company under this Act is, in consequence of his ignorance of the proceedings taken with a view to such reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and after such reduction the Company is unable, within the meaning of this Act, to pay to the creditor the amount

Saving of rights of creditors who are ignorant of proceedings

<sup>1</sup> Cf s. 4 of the Companies Act, 1877 (40 & 41 Vict, c 26)

(Part I.—Constitution and Incorporation of Companies and Associations under this Act. Secs. 21-23)

of such debt or claim, every person who was a member of the Company at the date of the registration of the order and minute relating to the reduction of its capital shall be liable to contribute for the payment of such debt or claim an amount not exceeding the amount which he would have been liable to contribute if the Company had commenced to be wound up on the day prior to such registration; and, on the Company being wound up, the Court, on the application of such creditor, and on proof that he was ignorant of the proceedings taken with a view to the reduction, or of their nature and effect with respect to his claim, may, if it thinks fit, settle a list of such contributories accordingly, and make and enforce calls and orders on the contributories settled on such list in the same manner in all respects as if they were ordinary contributories in a winding-up.

Nothing in this section shall affect the rights of the contributories of the Company among themselves.

Registered minute to be embodied in memorandum of association

21. A minute, when registered, shall be embodied in every copy of the memorandum of association issued after its registration; and, if any Company makes default in complying with the provisions of this section, it shall incur a penalty not exceeding ten rupees for each copy in respect of which such default is made; and every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Penalty on concealment of name of creditor

22. If any director, manager or officer of the Company wilfully conceals the name of any creditor of the Company who is entitled to object to the proposed reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor of the Company, or if any director or manager of the Company abets, within the meaning of the Indian Penal Code<sup>1</sup>, any such concealment or misrepresentation as aforesaid, every such director, manager or officer shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

XLV of 1860.

Power to reduce capital by cancellation of unissued shares

223. Any Company limited by shares may so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed or as altered by special resolution, as to reduce its capital by cancelling any shares which, at the date of passing such resolution, have not been taken or agreed to be taken by any persons;

<sup>1</sup> Printed, General Acts, Vol I, Ed 1898, p 240

<sup>2</sup> Cf s 5 of the Companies Act, 1877 (40 & 41 Vict, c 26)

(Part I.—*Constitution and Incorporation of Companies and Associations under this Act. Secs. 24-26*)

and the provisions as to reduction of capital contained in the other sections of this Act shall not apply to any reduction made in pursuance of this section.

*Sub-division of Shares.*<sup>1</sup>

24. Any Company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed or as altered by special resolution, as, by sub-division of its existing shares or any of them, to divide its capital, or any part thereof, into shares of smaller amount than is fixed by its memorandum of association:

Shares may be divided into shares of smaller amount

Provided that, in the sub-division of the existing shares, the proportion between the amount which is paid and the amount (if any) which is unpaid on each share of reduced amount shall be the same as it was in the case of the existing share or shares from which the share of reduced amount is derived.

25. The statement of the number and amount of the shares into which the capital of the Company is divided, contained in every copy of the memorandum of association issued after the passing of any such special resolution shall be in accordance with such resolution; and any Company which makes default in complying with the provisions of this section shall incur a penalty not exceeding twenty rupees for each copy in respect of which such default is made; and every director and manager of the Company who knowingly or wilfully authorizes or permits such default shall incur the like penalty.

Special resolution to be embodied in memorandum of association.

*Associations not for Profit*<sup>2</sup>

26. Where any association which might be formed under this Act as a limited Company proves to the Local Government that it is formed for the purpose of promoting commerce, art, science, charity or any other useful object, and that it is the intention of such association to apply the profits, if any, or other income of the association, in promoting its objects, and to prohibit the payment of any dividend to its members, the Local Government may, by license<sup>3</sup> under the hand of one of its Secretaries, direct such association to be registered with limited liability, without the addition of the word "limited" to its name; and such association may be registered

Special provisions as to associations formed for purposes not of gain.

<sup>1</sup> Cf ss 21 & 22 of the Companies Act, 1867 (30 & 31 Vict, c 131)

<sup>2</sup> Cf s 23 of the Companies Act, 1867 (30 & 31 Vict, c 131)

<sup>3</sup> For instance of such direction, see Madras List of Local Rules and Orders, Vol I, Ed. 1898, p 164.

(Part I.—*Constitution and Incorporation of Companies and Associations under this Act. Secs. 27-29*)

accordingly, and upon registration shall enjoy all the privileges and be subject to the obligations by this Act imposed on limited Companies; with the exceptions that none of the provisions of this Act that require a limited Company to use the word "limited" as any part of its name, or to publish its name, or to send a list of its members, directors or managers to the Registrar, shall apply to an association so registered

The license by the Local Government may be granted upon such conditions and subject to such regulations as the Local Government thinks fit to impose; and such conditions and regulations shall be binding on the association, and may at the option of the Local Government be inserted in the memorandum and articles of association, or in both or one of such documents.

*Calls upon Shares.<sup>1</sup>*

Company  
may have  
some shares  
fully paid,  
and others  
not.

27. Nothing herein contained shall be deemed to prevent any Company under this Act, if authorized by its regulations as originally framed or as altered by special resolution, from doing any one or more of the following things, namely:—

- (a) making arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid and in the time of payment of such calls.
- (b) accepting from any member of the Company who assents thereto the whole or a part of the amount remaining unpaid on any share or shares held by him, either in discharge of the amount of a call payable in respect of any other share or shares held by him or without any call having been made,
- (c) paying dividend in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others.

Manner in  
which shares  
are to be  
issued and  
held.

28. Every share in any Company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same has been otherwise determined by a contract duly made in writing and filed with the Registrar of Joint-Stock Companies at or before the issue of such shares.

*Transfer of Shares.<sup>2</sup>*

Transfer  
may be re-  
gistered at  
request of  
transferor

29. A Company shall, on the application of the transferor of any share or interest in the Company, enter in its register of members the name of

<sup>1</sup> Cf ss. 24 & 25 of the Companies Act, 1867 (30 & 31 Vict., c 131).

<sup>2</sup> Cf s 26 of the Companies Act, 1867 (30 & 31 Vict., c 131).

(Part I.—*Constitution and Incorporation of Companies and Associations under this Act. Secs. 30-34.*)

the transferee of such share or interest in the same manner and subject to the same conditions as if the application for such entry were made by the transferee.

*Share-warrants to Bearer.*<sup>1</sup>

30. In the case of a Company limited by shares, the Company, if authorized so to do by its regulations, as originally framed or as altered by special resolution, and subject to the provisions of such regulations, may, with respect to any share which is fully paid up or with respect to stock, issue under their common seal a warrant (hereinafter referred to as a share-warrant) stating that the bearer thereof is entitled to the shares or stock therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on such shares or stock.

Warrant of limited shares fully paid up may be issued in name of bearer.

Coupons.

31. A share-warrant shall entitle the bearer thereof to the shares or stock specified therein; and such shares or stock may be transferred by the delivery of the share-warrant.

Effect of share-warrant

32. The bearer of a share-warrant shall, subject to the regulations of the Company, be entitled, on surrendering such warrant for cancellation, to have his name entered as a member in the register of members; and the Company shall be responsible for any loss incurred by any person by reason of the Company entering in its register of members the name of any bearer of a share-warrant in respect of the shares or stock specified therein without the share-warrant being surrendered and cancelled.

Re-registration of bearer of a share-warrant in the register

33. The bearer of a share-warrant may, if the regulations of the Company so provide, be deemed to be a member of the Company within the meaning of this Act, either to the full extent or for such purposes as may be prescribed by the regulations:

Regulations of the Company may make the bearer of a share-warrant a member.

Provided that the bearer of a share-warrant shall not be qualified in respect of the shares or stock specified in such warrant for being a director or manager of the Company in cases where such a qualification is prescribed by the regulations of the Company.

34. On the issue of a share-warrant in respect of any share or stock, the Company shall strike out of its register of members the name of the member then entered therein as holding such share or stock, as if he had ceased to be a member, and shall enter in the register the following particulars:—

Entries in register where share-warrant issued.

(a) the fact of the issue of the warrant;

<sup>1</sup> Cf ss 27 to 31 & 32 of the Companies Act, 1867 (30 & 31 Vict, c 131)

(Part I.—*Constitution and Incorporation of Companies and Associations under this Act. Secs. 35-37*)

(b) a statement of the shares or stock included in the warrant, distinguishing each share by its number;

(c) the date of the issue of the warrant.

<sup>1</sup> 35. [*Stamps on share-warrants Penalty for issuing share-warrants not duly stamped*] *Rep. by the Indian Stamp Act, 1899.*

*Change of Name.*

Power of  
Companies to  
change name

36. Any Company under this Act, with the sanction of a special resolution of the Company passed in manner hereinafter mentioned, and with the approval of the Local Government testified in writing under the hand of one of the Secretaries to such Government, may change its name; and, upon such change being made, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the Company, or render defective any legal proceedings instituted or to be instituted by or against the Company; and any legal proceedings may be continued or commenced against the Company by its new name that might have been continued or commenced against the Company by its former name.

*Explanation.*—The issue of the certificate of incorporation is necessary to complete the change of name.

*Articles of Association.*

Regulations  
to be pre-  
scribed by  
articles of  
association.

37. The memorandum of association may, in the case of a Company limited by shares, and shall, in the case of a Company limited by guarantee or unlimited, be accompanied, when registered, by articles of association signed by the subscribers to the memorandum of association, and prescribing such regulations for the Company as the subscribers to the memorandum of association deem expedient.

The articles shall be expressed in separate paragraphs, numbered consecutively. They may adopt all or any of the provisions contained in the table marked A in the first schedule hereto. They shall, in the case of a Company, whether limited by guarantee or unlimited, that has a capital divided into shares, state the amount of capital with which the Company proposes to be registered, and in the case of a Company, whether limited by

<sup>1</sup> See now Art 59 and s 62 (2) of the Indian Stamp Act, 1899.

(Part I.—*Constitution and Incorporation of Companies and Associations under this Act. Secs. 38-40*)

guarantee or unlimited, that has not a capital divided into shares, state the number of members with which the Company proposes to be registered, for the purpose of enabling the Registrar to determine the fees payable on registration.

In a Company limited by guarantee or unlimited, and having a capital divided into shares, each subscriber shall take one share at the least, and shall write opposite to his name in the memorandum of association the number of shares he takes.

38. In the case of a Company limited by shares, if the memorandum of association is not accompanied by articles of association or, in so far as the articles do not exclude or modify the regulations contained in the table marked A in the first schedule hereto, the last-mentioned regulations shall, so far as the same are applicable, be deemed to be the regulations of the Company, in the same manner and to the same extent as if they had been inserted in articles of association and the articles had been duly registered.

Application  
of table A.

39. The articles of association shall be printed, and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least.

Signature  
and effect of  
articles of  
association.

When registered they shall bind the Company and the members thereof to the same extent as if each member had subscribed his name thereto and as if such articles contained a contract on the part of himself, his heirs, executors and administrators to conform to all the regulations contained in such articles subject to the provisions of this Act.

All moneys payable by any member to the Company in pursuance of the conditions and regulations of the Company, or any of such conditions or regulations, shall be deemed to be a debt due from such member to the Company.

#### *General Provisions.*

140. The memorandum of association, and the articles of association, if any, shall be delivered to the Registrar of Joint-Stock Companies hereinafter mentioned, who shall retain and register the same. It is not his duty to require evidence as to whether the several subscribers to a memorandum of association so delivered are competent to contract.<sup>2</sup>

Registration  
of memoran-  
dum of asso-  
ciation and  
articles of  
association  
with fees as  
in tables B  
and C.

<sup>1</sup> For notification fixing the fee for the registration of an association which is not for profit, as a Company under s 26, see Gazette of India, 1888, Pt. I, p 341

<sup>2</sup> As to persons competent to contract, see s 11 of the Indian Contract Act, 1872 (IX of 1872), printed, General Acts, Ed 1898, Vol II, p 299

(Part I—*Constitution and Incorporation of Companies and Associations under this Act Secs. 41-43*)

There shall be paid to the Registrar by a Company having a capital divided into shares, in respect of the several matters mentioned in the table marked B in the first schedule hereto, the several fees therein specified, or such smaller fees as the Governor General in Council may from time to time direct, and by a Company not having a capital divided into shares, in respect of the several matters mentioned in the table marked C in the first schedule hereto, the several fees therein specified, or such smaller fees as the Governor General in Council may from time to time direct.

All fees paid to the said Registrar in pursuance of this Act shall be accounted for to Government.

Effect of registration

41. Upon the registration of the memorandum of association, and of the articles of association in cases where articles of association are required by this Act or by the desire of the parties to be registered, the Registrar shall certify under his hand that the Company is incorporated, and in the case of a limited Company that the Company is limited: the subscribers of the memorandum of association, together with such other persons as may from time to time become members of the Company, shall thereupon be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated Company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the Company, in the event of the same being wound up, as is hereinafter mentioned.

A certificate of the incorporation of any Company given by the Registrar shall be conclusive evidence that all the requisitions of this Act in respect of registration have been complied with

Copies of memorandum and articles to be given to members.

42. A copy of the memorandum of association, having annexed thereto the articles of association, if any, shall be forwarded to every member, at his request, on payment of such sum, not exceeding one rupee, as may be prescribed by the Company for each copy; and if any Company makes default in forwarding a copy of the memorandum of association and articles of association, if any, to a member in pursuance of this section, the Company so making default shall for each such offence incur a penalty not exceeding twenty rupees.

Prohibition against identity of names in Companies

43. No Company shall be registered under a name identical with that by which a subsisting Company is already registered, or so nearly resembling the same as to be calculated to deceive, except in a case where such sub-

(Part II.—*Distribution of Capital and Liability of Members of Companies and Associations under this Act. Secs 44-46.*)

sisting Company is in the course of being dissolved and testifies its consent in such manner as the Registrar requires.

If any Company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a subsisting Company is registered, or so nearly resembling the same as to be calculated to deceive, such first-mentioned Company may, with the sanction of the Registrar, change its name; and, upon such change being made, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case, but no such alteration of name shall affect any rights or obligations of the Company, or render defective any legal proceedings instituted or to be instituted by or against the Company, and any legal proceedings may be continued or commenced against the Company by its new name that might have been continued or commenced against the Company by its former name

## PART II.

### DISTRIBUTION OF CAPITAL AND LIABILITY OF MEMBERS OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

#### *Distribution of Capital.*

44. The shares or other interest of any member in a Company under this Act shall be moveable property, capable of being transferred in manner provided by the regulations of the Company, and shall not be of the nature of real estate or immoveable property; and each share shall, in the case of a Company having a capital divided into shares, be distinguished by its appropriate number.

Nature of  
interest in  
Company.

45. The subscribers of the memorandum of association of any Company under this Act shall be deemed to have agreed to become members of the Company whose memorandum they have subscribed, and upon the registration of the Company shall be entered as members on the register of members hereinafter mentioned; and every other person who has agreed with a Company under this Act to become a member of such Company, and whose name is entered on the register of members, shall be deemed to be a member of the Company.

Definition of  
"member."

46. Any transfer of the share or other interest of a deceased member of the Company under this Act made by his personal representative shall, notwithstanding such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer.

Transfer by  
personal rep-  
resentative.

(Part II.—*Distribution of Capital and Liability of Members of Companies and Associations under this Act. Secs 47-48.*)

Register of  
members.

47. Every Company under this Act shall cause to be kept in one or more books a register of its members, and there shall be entered therein the following particulars :—

- (a) the names and addresses, and the occupations, if any, of the members of the Company, with the addition, in the case of a Company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member ;
- (b) the date at which the name of any person was entered in the register as a member ;
- (c) the date at which any person ceased to be a member.

Where a share-warrant has been issued under section 30, until the warrant is surrendered, the particulars mentioned in section 34 shall be deemed to be the particulars which are required by this section to be entered in the register of members of a Company ; and, on the surrender of a warrant, the date of such surrender shall be entered as if it were the date at which a person ceased to be a member.

Any Company acting in contravention of this section shall incur a penalty not exceeding fifty rupees for every day during which its default in complying with the provisions of this section continues, and every director or manager of the Company who knowingly and wilfully authorises or permits such contravention shall incur the like penalty.

Annual list  
of members.

48. Every Company under this Act and having a capital divided into shares shall make, once at least in every year, a list of all persons who, on the fourteenth day succeeding the day on which the ordinary general meeting, or, if there is more than one ordinary general meeting in each year, the first of such ordinary general meetings, is held, are members of the Company. Such list shall state the names, addresses and occupations of all the members therein mentioned, and the number of shares held by each of them, and shall contain a summary specifying the following particulars :—

- (a) the amount of the capital of the Company and the number of shares into which it is divided ;
- (b) the number of shares taken from the commencement of the Company up to the date of the summary ;
- (c) the amount of calls made on each share ;
- (d) the total amount of calls received ;

(Part II.—*Distribution of Capital and Liability of Members of Companies and Associations under this Act. Secs. 49-52.*)

- (e) the total amount of calls unpaid;
- (f) the total amount of shares forfeited;
- (g) the names, addresses and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them.

The above list and summary shall be contained in a separate part of the register, and shall be completed within seven days after such fourteenth day as is mentioned in this section, and a copy shall forthwith be forwarded to the Registrar of Joint-Stock Companies.

<sup>1</sup> 49. After the issue by the Company of a share-warrant, the annual summary required by section 48 shall contain the following particulars (namely):—the total amount of shares or stock for which share-warrants are outstanding at the date of the summary, and the total amount of share-warrants which have been issued and surrendered respectively since the last summary was made and the number of shares or amount of stock comprised in each warrant.

Particulars to be contained in annual summary.

50. If any Company under this Act and having a capital divided into shares makes default in complying with the provisions of this Act with respect to forwarding such list of members or summary as is hereinbefore mentioned to the Registrar, such Company shall incur a penalty not exceeding fifty rupees for every day during which such default continues; and every director and manager of the Company who knowingly and wilfully authorises or permits such default shall incur the like penalty.

Penalty on Company, etc., not keeping a proper register.

51. Every Company under this Act having a capital divided into shares that has consolidated and divided its capital into shares of larger amount than its existing shares, or converted any portion of its capital into stock, shall, within fifteen days of such consolidation, division or conversion, give notice to the Registrar of Joint-Stock Companies of the same, specifying the shares so consolidated, divided or converted.

Company to give notice of consolidation or of conversion of capital into stock

52. Where any Company under this Act and having a capital divided into shares has converted any portion of its capital into stock and given notice of such conversion to the Registrar, all the provisions of this Act which are applicable to shares only shall cease as to so much of the capital as is converted into stock; and the register of members hereby required to be kept by the Company and the list of members to be forwarded to the Registrar shall show the amount of stock held by each member in the

Effect of conversion of shares into stock.

<sup>1</sup> Cf s 32 of the Companies Act, 1867 (30 & 31 Vict, c 131).

(Part II.—*Distribution of Capital and Liability of Members of Companies and Associations under this Act. Secs 53-57.*)

list, instead of the amount of shares and the particulars relating to shares hereinbefore required

Entry of trusts on register.

53. No notice of any trust, express, implied or constructive, shall be entered on the register or be receivable by the Registrar in the case of Companies under this Act and registered in British India.

Certificate of shares or stock.

54. A certificate under the common seal of the Company, specifying any shares or stock held by any member of a Company, shall be *primâ facie* evidence of the title of the member to the share or shares or stock therein specified.

Inspection of register.

55. The register of members, commencing from the date of the registration of the Company, shall be kept at the registered office of the Company hereinafter mentioned. Except when closed as hereinafter mentioned, it shall, during business hours, but subject to such reasonable restrictions as the Company in general meeting may impose, so that not less than two hours in each day be appointed for inspection, be open to the inspection of any member gratis, and to the inspection of any other person on the payment of one rupee, or such less sum as the Company may prescribe, for each inspection.

Every such member or other person may require a copy of such register, or of any part thereof, or of such list or summary of members as is hereinbefore mentioned, on payment of two annas for every hundred words required to be copied.

If such inspection or copy is refused, the Company shall incur for each refusal a penalty not exceeding fifty rupees, and a further penalty not exceeding twenty rupees for every day during which such refusal continues.

Every director and manager of the Company who knowingly authorises or permits such refusal shall incur the like penalty.

In addition to the above penalty any Judge of a High Court may, by order, compel an immediate inspection of the register.

Power to close register

56. Any Company under this Act may, upon giving notice by advertisement in some newspaper circulating in the district in which the registered office of the Company is situate and in the local official Gazette, close the register of members for any time or times not exceeding in the whole thirty days in each year.

Notice of increase of capital and of members to be given to Registrar.

57. Where a Company has a capital divided into shares, whether such shares may or may not have been converted into stock, notice of any increase in such capital beyond the registered capital, and, where a Company has not a capital divided into shares, notice of any increase in the

(Part II.—*Distribution of Capital and Liability of Members of Companies and Associations under this Act. Sec 58*)

number of members beyond the registered number, shall be given to the Registrar, in the case of an increase of capital, within fifteen days from the date of the passing of the resolution by which such increase has been authorised, and in the case of an increase of members, within fifteen days from the time at which such increase of members has been resolved on or has taken place; and the Registrar shall forthwith record the amount of such increase of capital or members.

If such notice is not given within the period aforesaid, the Company in default shall incur a penalty not exceeding one hundred rupees for every day during which such neglect to give notice continues; and every director and manager of the Company who knowingly and wilfully authorises or permits such default shall incur the like penalty.

58. If the name of any person is fraudulently or without sufficient cause entered in, or omitted from, the register of members kept by any Company under this Act, or if default is made, or unnecessary delay takes place, in entering on the register the fact of any person having ceased to be a member of the Company, the person or member aggrieved, or any member of the Company, or the Company itself, may, by application to the principal Court of original civil jurisdiction in the district or place in which the registered office of the Company is situate, apply for an order of the Court that the register may be rectified; and the Court may either refuse such application, with or without costs to be paid by the applicant, or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the Company to pay all the costs of such application, and any damages the party aggrieved may have sustained.

Remedy for improper entry or omission of entry in register.

The Court may in any proceeding under this section decide any question relating to the title of any person who is a party to such proceeding to have his name entered in, or omitted from, the register, whether such question arises between two or more members or alleged members or between any members or alleged members and the Company, and whether there has or has not been default on the part of the Company; and generally the Court may, in any such proceeding, decide any question that it may be necessary or expedient to decide for the rectification of the register: Provided that the Court may direct an issue to be tried in which any question of law may be raised, and an appeal in the manner directed by the Code of Civil Procedure<sup>1</sup> shall lie.

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<sup>1</sup> See now the Code of Civil Procedure, 1882 (Act XIV of 1882), printed, *infra*, p 262.

(Part II.—*Distribution of Capital and Liability of Members of Companies and Associations under this Act. Secs 59-61.*)

Notice to Registrar of rectification of register.

59. Whenever any order has been made for rectifying the register in the case of a Company hereby required to send a list of its members to the Registrar, the Court shall, by its order, direct that due notice of such rectification be given to the Registrar.

Register to be evidence.

60. The register of members shall be *prima facie* evidence of any matters by this Act directed or authorized to be inserted therein

*Liability of Members.*

Liability of present and past members of Company

61. In the event of a Company formed under this Act being wound up, every present and past member of such Company shall be liable to contribute to the assets of the Company to an amount sufficient for payment of the debts and liabilities of the Company and the costs, charges and expenses of the winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following (that is to say):—

- (a) no past member shall be liable to contribute to the assets of the Company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding-up:
- (b) no past member shall be liable to contribute in respect of any debt or liability of the Company contracted after the time at which he ceased to be a member:
- (c) no past member shall be liable to contribute to the assets of the Company unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act:
- (d) in the case of a Company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member:
- (e) in the case of a Company, limited by guarantee, no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association:
- (f) nothing in this Act contained shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members upon any such policy or contract

(Part II.—*Distribution of Capital and Liability of Members of Companies and Associations under this Act. Sec 62.*)

is restricted, or whereby the funds of the Company are alone made liable in respect of such policy or contract.

- (g) no sum due to any member of a Company in his character of a member, by way of dividends, profits or otherwise, shall be deemed to be a debt of the Company payable to such member in a case of competition between himself and any other creditor not being a member of the Company; but any such sum may be taken into account for the purposes of the final adjustment of the rights of the contributories amongst themselves.

*Explanation I.*—The liability of past members is a liability to contribute to the general assets of the Company, against which assets creditors (at whatever time their debts may have been contracted) have equal rights

*Explanation II.*—In estimating the debts to which a past member is liable, all dividends paid on these debts under the winding-up must be deducted

162. With respect to the contributions to be required in the event of the winding-up of a limited Company from any director or manager whose liability is unlimited, the following modifications shall be made in the last preceding section:—

Liability of director whose liability is unlimited.

- (a) subject to the provisions hereinafter contained, any such director or manager, whether past or present, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to contribute as if he were at the date of the commencement of such winding-up a member of an unlimited Company.
- (b) no contribution required from any past director or manager who has ceased to hold such office for a period of one year or upwards prior to the commencement of the winding-up shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the Company.
- (c) no contribution required from any past director or manager in respect of any debt or liability of the Company contracted after the time at which he ceased to hold such office shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the Company:
- (d) subject to the provisions contained in the regulations of the Company, no contribution required from any director or manager

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<sup>1</sup> Cf. s 5 of the Companies Act, 1867 (30 & 31 Vict., c 131)

(Part III.—*Management and Administration of Companies and Associations under this Act. Secs 63-66*)

shall exceed the amount (if any) which he is liable to contribute as an ordinary member, unless the Court thinks it necessary to require such contribution in order to satisfy the debts and liabilities of the Company, or the costs, charges and expenses of the winding-up.

PART III.

MANAGEMENT AND ADMINISTRATION OF COMPANIES AND ASSOCIATIONS

UNDER THIS ACT.

*Provisions for Protection of Creditors.*

Registered  
office of  
Company

63. Every Company under this Act shall have a registered office to which all communications and notices may be addressed. If any Company under this Act carries on business without having such an office, it shall incur a penalty not exceeding fifty rupees for every day during which business is so carried on.

Notice of  
situation of  
registered  
office

64. Notice of the situation of such registered office and of any change therein shall be given to the Registrar and recorded by him. Until such notice is given, the Company shall not be deemed to have complied with the provisions of this Act with respect to having a registered office.

Publication  
of name by a  
limited  
Company

65. Every limited Company under this Act, whether limited by shares or by guarantee, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the Company is carried on, in a conspicuous position, in letters easily legible, in the English language, and also, if the registered office be situate in a district beyond the local limits of the ordinary original civil jurisdiction of a High Court, in one of the vernacular languages used in such district, and shall have its name engraven in legible characters in such language or languages on its seal, and shall have its name mentioned in legible characters<sup>1</sup> [in the English language] in all notices, advertisements and other official publications of such Company, and in all bills of exchange, hundis, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of such Company, and in all bills of parcels, invoices, receipts and letters of credit of the Company.

Penalties on  
non-publi-  
cation of  
name

66. If any limited Company under this Act does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall

<sup>1</sup> These words were substituted for the words "in such language or languages" by s. 11 of the Indian Companies (Memorandum of Association) Act, 1895 (XII of 1895), printed, General Acts, Vol. VI.

(Part III.—*Management and Administration of Companies and Associations under this Act. Sec. 67.*)

be liable to a penalty not exceeding fifty rupees for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed

Every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall be liable to the like penalty.

If any director, manager or officer of such Company, or any person on its behalf, uses or authorizes the use of any seal purporting to be a seal of the Company whereon its name is not so engraven as aforesaid, or issues or authorizes the issue of any notice, advertisement or other official publication of such Company, or signs or authorizes to be signed on behalf of such Company any bill of exchange, hundí, promissory note, endorsement, cheque<sup>1</sup> [or] order for money or goods, or issues or authorizes to be issued any bill of parcels, invoice, receipt or letter of credit of the Company wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of one thousand rupees, and shall further be personally liable to the holder of any such bill of exchange, hundí, promissory note, cheque or order for money or goods for the amount thereof, unless the same is duly paid by the Company.

*Contracts.*

<sup>2</sup> 67. Contracts on behalf of any Company under this Act may be made as follows (that is to say) :— Contracts  
how made.

- (a) any contract, which if made between private persons would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the Company, in writing under the common seal of the Company; and such contract may be in the same manner varied or discharged :
- (b) any contract, which if made between private persons would be by law required to be in writing signed by the parties to be charged therewith, may be made on behalf of the Company in writing signed by any person acting under the express or implied authority of the Company, and such contract may, in the same manner, be varied or discharged :
- (c) any contract, which if made between private persons would by law be valid, although made by parol only and not reduced into

<sup>1</sup> The word "or" was inserted by the Repealing and Amending Act, 1891 (XII of 1891).  
Printed, General Acts, Vol VI

<sup>2</sup> Cf. s 37 of the Companies Act, 1867 (30 & 31 Vict., c. 131).

(Part III.—*Management and Administration of Companies and Associations under this Act. Secs. 68-69*)

writing, may be made by parol on behalf of the Company by any person acting under the express or implied authority of the Company; and such contract may in the same way be varied or discharged. And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the Company and their successors, and all other parties thereto, their heirs, executors or administrators, as the case may be

Register of  
mortgages

68. Every limited Company under this Act shall keep a register of all mortgages and charges specifically affecting property of the Company, and shall enter in such register, in respect of each mortgage or charge, a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge.

If any property of the Company is mortgaged or charged without such entry as aforesaid being made, every director, manager or other officer of the Company who knowingly and wilfully authorizes or permits the omission of such entry shall incur a penalty not exceeding five hundred rupees.

The register of mortgages required by this section shall be open to inspection by any creditor or member of the Company at all reasonable times. If such inspection is refused, any officer of the Company refusing the same, and every director and manager of the Company authorizing or knowingly and wilfully permitting such refusal, shall incur a penalty not exceeding fifty rupees, and a further penalty not exceeding twenty rupees for every day during which such refusal continues.

The High Court or any Judge thereof may by order compel the performance of the duty imposed by this section on a limited Company, and in addition to the above penalty may, by order, compel an immediate inspection of the register.

*Explanation*—Omission to register under this section a mortgage or charge does not render the same invalid. But the officers of the Company cannot avail themselves as such of a mortgage or charge specifically affecting property of the Company and not so registered

Certain  
Companies  
to publish  
statement  
entered in  
schedule

69. Every limited banking Company, and every insurance Company, and deposit, provident or benefit society under this Act, shall before it commences business, and also on the first Monday in February and the first Monday in August in every year during which it carries on business, make a statement in the form marked D in the first schedule hereto, or as near

*(Part III.—Management and Administration of Companies and  
Associations under this Act. Secs 70-73)*

thereto as circumstances will admit; and a copy of such statement shall be put up in a conspicuous place in the registered office of the Company and in every branch office or place where the business of the Company is carried on.

If default is made in compliance with the provisions of this section, the Company shall be liable to a penalty not exceeding fifty rupees for every day during which such default continues; and every director and manager of the Company who knowingly and wilfully authorises or permits such default shall incur the like penalty.

Every member and every creditor of any Company mentioned in this section shall be entitled to a copy of the above-mentioned statement on payment of a sum not exceeding eight annas

**70.** Every Company under this Act and not having a capital divided into shares shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and shall send to the Registrar of Joint-Stock Companies a copy of such register, and shall from time to time notify to the Registrar any change that takes place in such directors or managers.

List of directors to be sent to Registrar

**71.** If any Company under this Act and not having a capital divided into shares makes default in keeping a register of its directors or managers, or in sending a copy of such register to the Registrar in compliance with the foregoing rules, or in notifying to the Registrar any change that takes place in such directors or managers, such delinquent Company shall incur a penalty not exceeding one hundred rupees for every day during which such default continues, and every director or manager of the Company who knowingly and wilfully authorises or permits such default shall incur the like penalty.

Penalty on Company not keeping register of directors

**72.** A promissory note, bill of exchange, or hundí shall be deemed to have been made, drawn, accepted or endorsed on behalf of any Company under this Act, if made, drawn, accepted or endorsed in the name of the Company by any person acting under the authority of the Company, or if made, drawn, accepted or endorsed by or on behalf or on account of the Company by any person acting under the authority of the Company.

Promissory notes, bills of exchange and hundis.

**73.** If any Company under this Act carries on business when the number of its members is less than seven, for a period of six months after the number has been so reduced, every person who is a member of such Company during the time that it so carries on business after such period of six months, and is cognizant of the fact that it is so carrying on

Prohibition against carrying on business with less than seven members.

(Part III.—*Management and Administration of Companies and Associations under this Act. Secs. 74-75.*)

business with fewer than seven members, shall be severally liable for the payment of the whole debt of the Company contracted during such time, and may be sued for the same without the joinder in the suit of any other member.

*Provisions for Protection of Members.*

General  
meeting of  
Company  
Balance-  
sheet

74. A general meeting of every Company under this Act shall be held once at the least in every year.

A balance sheet shall be made out and filed with the Registrar of Joint-Stock Companies within twelve months after the Company has been registered, and once at least in every year afterwards within twelve months from the filing of the balance-sheet immediately preceding; and such balance sheet shall contain a summary of the property and liabilities of the Company arranged under the heads appearing in the form annexed to table A in the first schedule hereto, or as near thereto as circumstances admit

Audit

And once at the least in every year the accounts of the Company shall be examined and the correctness of the last balance-sheet and its conformity with the law ascertained and certified by one or more auditor or auditors.

No balance-sheet shall be filed with the Registrar unless and until its correctness and conformity with the law have been so ascertained and certified, and it has been laid before and adopted by the Company in general meeting.

If default is made in compliance with any of the provisions of this section, every director and manager of the Company who knowingly and wilfully authorises or permits such default shall be liable to a penalty of one thousand rupees.

*Meetings.*

Company to  
hold meeting  
within six  
months after  
registration

175. Every Company formed under this Act, after the commencement of this Act shall hold a general meeting, within six months after its memorandum of association is registered, and, if such meeting is not held, the Company shall be liable to a penalty not exceeding fifty rupees a day for every day after the expiration of such six months, until the meeting is held; and every director or manager of the Company and every subscriber of the memorandum of association who knowingly authorises or permits such default shall be liable to the same penalty.

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<sup>1</sup> Cf. s. 39 of the Companies Act, 1867 (30 & 31 Vict., c 131)

(Part III.—*Management and Administration of Companies and Associations under this Act, Secs 76-77.*)

X of 1866      **76.** Subject to the provisions of this Act and to the conditions contained in the memorandum of association, any Company formed under this Act or the Indian Companies Act, 1866<sup>1</sup>, may, in general meeting, from time to time, by passing a special resolution in manner hereinafter mentioned, alter all or any of the regulations of the Company contained in the articles of association, or in the table marked A in the first schedule, where such table is applicable to the Company, or make new regulations to the exclusion of, or in addition to, all or any of the regulations of the Company

Power to alter regulations by special resolution

<sup>2</sup> Any regulations so made by special resolution shall be deemed to be regulations of the Company of the same validity as if they had been originally contained in the articles of association, and shall be subject in like manner to be altered or modified by any subsequent special resolution.

X of 1866      Any limited Company formed under this Act or the Indian Companies Act, 1866<sup>1</sup>, may by a special resolution, if authorised to do so by its regulations as originally framed or as altered by special resolution, from time to time modify the conditions contained in its memorandum of association so far as to render unlimited, from and after the date of such resolution, the liability of its directors or managers, or of the managing director. Such special resolution shall be of the same validity as if it had been originally contained in the memorandum of association, and a copy thereof shall be embodied in, or annexed to, every copy of the memorandum of association which is issued after the passing of the resolution

Power to make liability of directors unlimited.

**77.** A resolution passed by a Company under this Act shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the Company for the time being entitled, according to the regulations of the Company, to vote, as may be present in person or by proxy (in cases where by the regulations of the Company proxies are allowed) at any general meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled, according to the regulations of the Company, to vote, as may be present in person or by proxy at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than fourteen days, nor more than one month, from the date of the meeting at which such resolution was first passed.

Definition of "special resolution"

<sup>1</sup> Act X of 1866 was repealed by s 2 of this Act

<sup>2</sup> Cf. s. 8 of the Companies Act, 1867 (30 & 31 Vict, c 131)

*(Part III.—Management and Administration of Companies and  
Associations under this Act. Secs 78-80)*

At any meeting mentioned in this section, unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same.

Notice of any meeting shall, for the purposes of this section, be deemed to be duly given and the meeting to be duly held whenever such notice is given and meeting held in manner prescribed by the regulations of the Company.

In computing the majority under this section when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the Company.

Provision  
where no re-  
gulations as  
to meetings.

78. In default of any regulations as to voting, every member shall have one vote, and, in default of any regulations as to summoning general meetings, a meeting shall be held to be duly summoned of which seven days' notice in writing has been served on every member in manner in which notices are required to be served by the table marked A in the first schedule hereto.

In default of any regulations as to the persons to summon meetings, five members shall be competent to summon the same, and, in default of any regulation as to who is to be chairman of such meeting, it shall be competent for any person elected by the members present to preside.

Registration  
of special  
resolutions.

79. A copy of every special resolution that is passed by any Company under this Act shall be printed and forwarded to the Registrar of Joint-Stock Companies and be recorded by him.

If such copy is not so forwarded within fifteen days from the date of the confirmation of the resolution, the Company shall incur a penalty not exceeding twenty rupees for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded; and every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Copies of  
special reso-  
lutions to be  
embodied in  
articles of  
association.

80. Where articles of association have been registered, a copy of every special resolution for the time being in force shall be annexed to, or embodied in, every copy of the articles of association that may be issued after the passing of such resolution. Where no articles of association have been registered, a copy of every special resolution shall be forwarded in print to any member requesting the same on payment of one rupee or such less sum as the Company may direct.

(Part III.—*Management and Administration of Companies and Associations under this Act. Secs. 81-84*)

If any Company makes default in complying with the provisions of this section or section 76, it shall incur a penalty not exceeding twenty rupees for each copy in respect of which such default is made; and every director and manager of the Company who knowingly and wilfully authorises or permits such default shall incur the like penalty

81. Any Company under this Act may, by instrument in writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in British India, and every deed signed by such attorney on behalf of the Company and under his seal shall be binding on the Company and have the same effect as if it were under the common seal of the Company

Execution of  
deeds abroad.

82. The Local Government may appoint one or more competent inspectors to examine into the affairs of any Company under this Act, and to report thereon in such manner as the Local Government may direct upon the applications following (that is to say):—

Examination  
of affairs of  
Company by  
inspectors

(a) In the case of a banking or any other Company that has a capital divided into shares, upon the application of members holding not less than one-fifth part of the whole shares of the Company for the time being issued:

(b) In the case of any Company not having a capital divided into shares, upon the application of members being in number not less than one-fifth of the whole number of persons for the time being entered on the register of the Company as members

83. The application shall be supported by such evidence as the Local Government may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same.

Application  
for inspec-  
tion to be  
supported by  
evidence

The Local Government may also require the applicants to give security for payment of the costs of the inquiry before appointing any inspector or inspectors.

84. It shall be the duty of all officers and agents of the Company to produce for the examination of the inspectors all books and documents in their custody or power.

Inspection of  
books

Any inspector may examine upon oath the officers and agents of the Company in relation to its business

If any such officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the

*(Part III.—Management and Administration of Companies and Associations under this Act. Secs 85-88)*

affairs of the Company, he shall incur a penalty not exceeding one hundred rupees in respect of each such offence.

Result of  
examination  
how dealt  
with

85. Upon the conclusion of the examination, the inspectors shall report their opinions to the Local Government. Such report shall be written or printed as the Local Government directs.

A copy shall be forwarded by the Local Government to the registered office of the Company, and a further copy shall, at the request of the members upon whose application the inspection was made, be delivered to them or to any one or more of them.

All expenses of and incidental to any such examination as aforesaid shall be defrayed by the members upon whose application the inspectors were appointed, unless the Local Government shall direct the same to be paid out of the assets of the Company, which the Local Government is hereby authorized to do.

Power of  
Company to  
appoint  
inspectors

86. Any Company under this Act may, by a special resolution, appoint inspectors for the purpose of examining into the affairs of the Company.

The inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Local Government, with this exception, that, instead of making their report to the Local Government, they shall make the same in such manner and to such persons as the Company in general meeting directs.

The officers and agents of the Company shall incur the same penalties in case of any refusal to produce any book or document hereby required to be produced to such inspectors, or to answer any question, as they would have incurred if such inspectors had been appointed by the Local Government.

Report of  
inspectors  
to be  
evidence.

87. A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the Company into whose affairs they have made inspection, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in such report.

Prospectus,  
etc., to  
specify dates  
and names of  
parties to  
certain prior  
contracts

88. Every prospectus of a Company, and every notice inviting persons to subscribe for shares in any Joint-Stock Company, shall specify the dates <sup>1</sup>[of] and the names of the parties to an agreement enforceable by law which has been entered into by the Company, or the promoters, directors, or trustees thereof, before the issue of such prospectus or notice (whether subject to adoption by the directors or the Company, or otherwise), and which might reasonably influence a person in determining whether he

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<sup>1</sup> The word "of" was inserted by the Repealing and Amending Act, 1891 (XII of 1891) Printed, General Acts, Vol VI

(Part III.—*Management and Administration of Companies and Associations under this Act. Secs 89-92*)

would or would not become a shareholder in the Company; and any prospectus or notice not specifying the same shall be deemed fraudulent on the part of the promoters, directors and officers of the Company knowingly issuing the same, as regards any person taking shares in the Company on the faith of such prospectus, unless he has had notice of such contract.

*Notices.*

<sup>1</sup> 89. Any summons, notice, order or other document required to be served upon the Company may be served by leaving the same, or sending it through the post by a registered letter addressed to the Company, at their registered office, and any notice to the Registrar of Joint-Stock Companies may be served by sending it to him through the post by a registered letter, or by delivering it to him, or by leaving it for him at his office.

Service of  
notices on  
Company

90. Every document to be served by post on the Company, shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof; and, in proving service of such document, it shall be sufficient to prove that such document was properly directed, and that it was put as a registered letter into the post office.

Rules as to  
notices by  
letter

91. Any summons, notice, order or proceeding requiring authentication by the Company may be signed by any director, secretary or other authorized officer of the Company, and need not be under the common seal of the Company; and the same may be in writing or in print, or partly in writing and partly in print.

Authentica-  
tion of  
notices by  
Company.

*Legal Proceedings.*

92. Every Company under this Act shall cause minutes of all resolutions and proceedings of general meetings of the Company, and of the directors or managers of the Company in cases where there are directors or managers, to be duly entered in books to be from time to time provided for the purpose; and any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings.

Evidence of  
proceedings  
at meetings.

Until the contrary is proved, every general meeting of the Company or meeting of directors or managers in respect of the proceedings of which

<sup>1</sup> Cf s 38 of the Companies Act, 1867 (30 & 31 Vict, c 131)

(Part III.—*Management and Administration of Companies and Associations under this Act Secs. 93-95*)

minutes have been so made shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had to have been duly passed and had, and all appointments of directors, managers or liquidators shall be deemed to be valid, and all acts done by such directors, managers or liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications.

*Explanation.*—Nothing in this section shall be deemed to give validity to acts done by a liquidator after his appointment has been shown to be invalid

Provision as to costs in suits brought by certain limited Companies

93. Where a limited Company is plaintiff in any suit, if it appears from the evidence adduced that there is reason to believe that, if the defendant be successful in his defence, the assets of the Company will be insufficient to pay his costs, any Judge having jurisdiction in the matter may require sufficient security to be given for such costs, and may stay all proceedings until such security is given.

Plaint in suits against members

94. In any suit brought by the Company against any member to recover any call or other moneys due from such member in his character of member, it shall be sufficient to allege that the defendant is a member of the Company and is indebted to the Company in respect of a call made or other moneys due whereby a suit has accrued to the Company.

*Alteration of Forms*

Forms to be used

95. The forms set forth in the second schedule hereto, or forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer.

Governor General in Council may alter forms

The Governor General in Council may, from time to time, make such alterations in the tables and forms contained in the first schedule hereto, so that he does not increase the amount of fees payable to the Registrar in the said schedule mentioned, and in the forms in the second schedule, or make such additions to the last-mentioned forms, as he deems requisite

Any such table or form, when altered, shall be published in the Gazette of India, and, upon such publication being made, such table or form shall have the same force as if it were included in the schedule to this Act; but no alteration made by the Governor General in Council in the table marked A contained in the first schedule shall affect any Company registered prior to the date of such alteration, or repeal, as respects such Company, any portion of such table.

(Part III.—*Management and Administration of Companies and Associations under this Act. Secs. 96-102.*)

*Arbitrations*<sup>1</sup>.

96. Any Company under this Act may, from time to time, by writing under its common seal, agree to refer, and may refer, to arbitration any matter whatsoever in dispute between itself and any other Company or person, and the Companies, parties to the arbitration, may delegate to the person or persons, to whom the reference is made, power to settle any terms or to determine any matter capable of being lawfully settled or determined by the Companies themselves, or by the directors or other managing body of such Companies.

Power for Companies to refer matters to arbitration.

97. The Companies jointly, but not otherwise, from time to time, by writing under their respective common seals, may add to, alter or revoke any agreement for reference in accordance with this Act theretofore entered into between the Companies, or any of the terms, conditions or stipulations thereof

Power to alter or revoke agreements for reference

98. Every reference or agreement in accordance with this Act, except so far as it is, from time to time, revoked or modified in accordance with this Act, shall bind the Companies, and may and shall be carried into full effect.

Agreements to be carried into effect.

99. Where the Companies agree, the reference shall be made to a single arbitrator

Reference to arbitrator

100. Except where the Companies agree that the reference shall be made to a single arbitrator, the reference shall be made as follows, to wit:—  
where there are two Companies, the reference shall be made to two arbitrators;

Reference to two or more arbitrators

where there are three or more Companies, the reference shall be made to so many arbitrators as there are Companies

101. Where there are to be two or more arbitrators, every Company shall by writing under their common seal appoint one of the arbitrators, and shall give notice in writing thereof to the other Company or Companies

Appointment of arbitrators by Companies

102. Where there are to be two or more arbitrators, if any of the Companies fail to appoint an arbitrator within fourteen days after being thereunto requested in writing by the other Company, or by the other Companies or any of them, then, on the application of the Companies or any of them, the Local Government, instead of the Company so failing to appoint an arbitrator, may appoint an arbitrator. The arbitrator so appointed

Appointment of arbitrators by Local Government.

<sup>1</sup> Cf the Arbitration (Railway) Act, 1859 (22 & 23 Vict, c 59).

(Part III—Management and Administration of Companies and Associations under this Act. Secs 103-109)

shall for the purposes of this Act be deemed to be appointed by the Company so failing

Appointment of arbitrators by Companies to supply vacancies.

103. Where the reference is made to two or more arbitrators, if before the matters referred to them are determined any arbitrator dies, or becomes incapable or unfit, or for seven consecutive days fails to act as arbitrator, the Company by which he was appointed shall by writing under their common seal appoint an arbitrator in his place.

Appointment of arbitrators by Local Government to supply vacancies.

104. Where the Company, by which an arbitrator ought to be appointed in the place of the arbitrator so deceased, incapable, unfit or failing to act, fails to make the appointment within fourteen days after being thereunto requested in writing by the other Company, or by the other Companies or any of them, then, on the application of the Companies or any of them, the Local Government may appoint an arbitrator.

The arbitrator so appointed shall for the purposes of this Act be deemed to be appointed by the Company so failing.

Appointment of arbitrator not revocable

105. When any appointment of an arbitrator is made, the Company making the appointment shall have no power to revoke the same without the previous consent in writing of the other Company or every other Company in writing under their common seal.

Appointment of umpire by arbitrators

106. Where two or more arbitrators are appointed, they shall, before entering on the business of the reference, appoint by writing under their hands an impartial and qualified person to be their umpire

Appointment of umpire by Local Government.

107. If the arbitrators do not appoint an umpire within seven days after the reference is made to the arbitrators, then, on the application of the Companies or any of them, the Local Government may appoint an umpire; and the umpire so appointed shall for the purposes of this Act be deemed to be appointed by the arbitrators.

Appointment of umpire by arbitrators to supply vacancy.

108. Where two or more arbitrators are appointed, if before the matters referred to them are determined their umpire dies, or becomes incapable or unfit, or for seven consecutive days fails to act as umpire, the arbitrators shall by writing under their hands appoint an impartial and qualified person to be their umpire in his place.

Appointment of umpire by Local Government to supply vacancy

109. If the arbitrators fail to appoint an umpire within seven days after notice in writing to them of the decease, incapacity, unfitness or failure to act of their umpire, then, on the application of the Companies or any of them, the Local Government may appoint an umpire

The umpire so appointed shall for the purposes of this Act be deemed to be appointed by the arbitrators so failing

(Part III.—*Management and Administration of Companies and Associations under this Act. Secs 110-116*)

110. Every arbitrator appointed in the place of a preceding arbitrator, and every umpire appointed in the place of a preceding umpire, shall respectively have the like powers and authorities as his respective predecessor.

Succeeding arbitrators and umpires to have powers of predecessors. Reference to umpire.

111. Where there are two or more arbitrators, if they do not within such a time as the Companies agree on, or, failing such agreement, within thirty days next after the reference is made to the arbitrators, agree on their award thereon, then the matters referred to them, or such of those matters as are not then determined, shall stand referred to their umpire.

112. The arbitrator, and the arbitrators and the umpire, respectively, may call for the production of any documents or evidence in the possession or power of the Companies respectively, or which they respectively can produce, and which the arbitrator or the arbitrators or the umpire shall think necessary for determining the matters referred, and may examine the witnesses of the Companies respectively on oath.

Power for arbitrators, etc., to call for books, etc., and examine witnesses on oath.

113. Except where and as the Companies otherwise agree, the arbitrator, and the arbitrators and the umpire, respectively, may proceed in the business of the reference in such manner as he and they respectively shall think fit.

Procedure in the arbitration.

114. The arbitrator, and the arbitrators and the umpire, respectively, may proceed in the absence of all or any of the Companies in every case in which, after giving notice in that behalf to the Companies respectively, the arbitrator, or the arbitrators or the umpire, shall think fit so to proceed.

Arbitration may proceed in absence of Companies.

115. The arbitrator, and the arbitrators and the umpire, respectively, may, if he and they respectively think fit, make several awards, each on part of the matters referred, instead of one award on all the matters referred.

Several awards may be made.

Every such award on part of the matters shall, for such time as shall be stated in the award, the same being such as shall have been specified in the agreement for arbitration, or, in the event of no time having been so specified, for any time which the arbitrator may be legally entitled to fix, be binding as to all the matters to which it extends, and as if the matters awarded on were all the matters referred, and that notwithstanding the other matters or any of them be not then or thereafter awarded on.

116. The award of the arbitrator, or of the arbitrators or of the umpire, if made in writing under his or their respective hand or hands, and ready to be delivered to the Companies within such a time as the Companies agree on, or, failing such agreement, within thirty days next after the matters in

Awards made in due time to bind all parties.

(Part III—Management and Administration of Companies and Associations under this Act. Secs 117-123)

difference are referred to (as the case may be) the arbitrator or the arbitrators or the umpire, shall be binding and conclusive on all the Companies

Power for  
umpire to  
extend period  
for making  
his award

117. Provided always that (except where and as the Companies otherwise agree) the umpire, from time to time by writing under his hand, may extend the period within which his award is to be made. If it be made and ready to be delivered within the extended time, it shall be as valid and effectual as if made within the prescribed period.

Awards not  
to be set  
aside for  
informality  
Awards to  
be obeyed

118. No award made on any arbitration in accordance with this Act shall be set aside for any irregularity or informality.

119. Except only so far as the Companies bound by any award in accordance with this Act from time to time otherwise agree, all things by every award in accordance with this Act lawfully required to be done, omitted or suffered shall be done, omitted or suffered accordingly

Agreements,  
arbitrations  
and awards  
to have  
effect

120. Full effect shall be given by the Courts according to their respective jurisdictions, and by the Companies respectively and otherwise, to all agreements, references, arbitrations and awards in accordance with this Act, and the performance or observance thereof may, where the Courts think fit, be compelled by any process against the Companies respectively or their respective property that the Courts or any Judge thereof shall direct, and where requisite frame, for the purpose.

Costs of  
arbitration  
and award.

121. Except where and as the Companies otherwise agree, the costs of and attending the arbitration and the award shall be in the discretion of the arbitrator, and the arbitrators and the umpire, respectively.

Payment of  
costs.

122. Except where and as the Companies otherwise agree, and if and so far as the award does not otherwise determine, the costs of and attending the arbitration and the award shall be borne and paid by the Companies in equal shares, and in other respects the Companies shall bear their own respective costs.

Submission  
to arbitration  
to be filed in  
Court.

123. On the application of any party interested, the submission to any such arbitration may be filed in the High Court, and an order of reference may be made thereon, with any directions the Court thinks fit; and the provisions of the Code of Civil Procedure<sup>1</sup> shall, so far as the same are applicable, apply to every such order and to all proceedings thereunder.

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<sup>1</sup> See now Act XIV of 1882, printed, *infra*, p 262

(Part IV.—*Winding-up of Companies and Associations under this Act.*  
Secs. 124-127.)

## PART IV

## WINDING-UP OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

*Preliminary*

124. The term “contributory” shall mean every person liable to contribute to the assets of a Company under this Act in the event of the same being wound up; it shall also, in all proceedings for determining the persons who are to be deemed contributories, and in all proceedings prior to the final determination of such persons, include any person alleged to be a contributory.

Meaning of  
“contribu-  
tory.”

125. The liability of any person to contribute to the assets of a Company under this Act in the event of the same being wound up shall be deemed to create a debt accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made as hereinafter mentioned for enforcing such liability, and it shall be lawful, in the case of the insolvency of any contributory, to prove against his estate the estimated value of his liability to future calls, as well as calls already made.

Nature of  
liability of  
contributory.

No claim founded on the liability of a contributory shall be cognizable by any Court of Small Causes situate outside the towns of Calcutta, Madras and Bombay.

126. If any contributory dies either before or after he has been placed on the list of contributories hereinafter mentioned, his personal representatives, heirs and devisees shall be liable in due course of administration to contribute to the assets of the Company in discharge of the liability of such deceased contributory, and such personal representatives, heirs and devisees shall be deemed to be contributories accordingly.

Contribu-  
tories in case  
of death.

127. If any contributory becomes insolvent, either before or after he has been placed on the list of contributories, his assignees shall be deemed to represent such insolvent for all the purposes of the winding-up, and shall be deemed to be contributories accordingly, and may be called upon to admit to <sup>1</sup>[proof] against the estate of such insolvent, or otherwise to allow, to be paid out of his assets in due course of law, any moneys due from such insolvent in respect of his liability to contribute to the assets of the Company being wound up.

Contribu-  
tories in case  
of insolvency.

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<sup>1</sup> “Proof” was substituted for “prove” by the Repealing and Amending Act, 1891 (XII of 1891) Printed, General Acts, Vol VI

(Part IV.—*Winding-up of Companies and Associations under this Act.*  
Secs 128-130.)

*Winding-up by Court.*

Circum-  
stances under  
which Com-  
pany may be  
wound up by  
Court

128. A Company under this Act may be wound up by the Court as hereinafter defined under the following circumstances (that is to say).—

- (a) whenever the Company has passed a special resolution requiring the Company to be wound up by the Court,
- (b) whenever the Company does not commence its business within a year from its incorporation or suspends its business for the space of a whole year,
- (c) whenever the members are reduced in number to less than seven;
- (d) whenever the Company is unable to pay its debts,
- (e) whenever for any other reason of a like nature the Court is of opinion that it is just and equitable that the Company should be wound up.

Company  
when deemed  
unable to pay  
its debts

129. A Company under this Act shall be deemed to be unable to pay its debts—

- (a) whenever a creditor, by assignment or otherwise, to whom the Company is indebted in a sum exceeding five hundred rupees then due, has served on the Company, by leaving the same at its registered office, a demand under his hand requiring the Company to pay the sum so due, and the Company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor;
- (b) whenever execution or other process issued on a decree or order obtained in any Court in favour of any creditor in any proceeding instituted by such creditor against the Company is returned unsatisfied in whole or in part;
- (c) whenever it is proved to the satisfaction of the Court that the Company is unable to pay its debts.

Definition of  
"the Court"

130. The expression "the Court" as used in this Part of this Act shall mean the principal Court having original civil jurisdiction in the place in which the registered office of the Company is situate, unless in the regulations for the management of the Company it shall be stipulated that the Company, if wound up, shall be wound up by the High Court of Judicature at Fort William, Madras or Bombay (as the case may be), or by the Chief Court of the Punjab, in which case the word "Court" shall mean the said High Court or Chief Court (as the case may be) in the exercise of its original civil jurisdiction.

(Part IV.—Winding-up of Companies and Associations under this Act.  
Secs. 131-132)

The expression “debts” as used in this Part of this Act means debts actually due, of which the creditor could claim immediate payment, except in the case of a Company issuing or liable under policies of assurance upon human life within British India, or granting annuities upon human life within British India<sup>1</sup> In the case of such a Company (hereinafter called a life-assurance Company), the expression “debts,” as so used, includes also contingent or prospective liability under policies and annuity and other existing contracts.

Definition of  
“debts”

**131.** Any application to the Court for the winding-up of a Company under this Act shall be by petition, which may be presented by the Company, or by any one or more creditor or creditors, contributory or contributories, of the Company, or by all or any of the above parties, together or separately.

Application  
for winding-  
up to be  
made by  
petition.

The petition must allege facts which, if proved, will justify an order for winding-up the Company. Every order which may be made on any such petition shall operate in favour of all the creditors and all the contributories of the Company in the same manner as if it had been made upon the joint petition of a creditor and a contributory.

In the case of a life-assurance Company the Court shall not give a hearing to the petition until security for costs for such amount as the Judge thinks reasonable is given, and until a *prima facie* case is also established to the satisfaction of the Judge; and where the Company has an uncalled capital of an amount sufficient, with the future premiums receivable by the Company, to make up the actual invested assets equal to the amount of the estimated liabilities, the Court shall suspend further proceedings on the petition for a reasonable time to enable the uncalled capital, or a sufficient part thereof, to be called up; and, if at the end of the original or any suspended time for which the proceedings have been suspended such an amount has not been realised by means of calls as with the already invested assets is equal to the liabilities, an order shall be made on the petition as if the Company had been proved to be unable to pay its debts.

*Explanation.*—Nothing in this section authorises the presentation of a petition by a member of a Company who is indebted to the Company in respect of a call made, or other moneys due

**132.** No contributory of a Company under this Act shall be capable of presenting a petition for winding-up such Company unless the members of

Contributory  
when not  
qualified to

<sup>1</sup> Cf s 21 of the Life Assurance Companies Act, 1870 (33 & 34 Vict, c 61)

<sup>2</sup> Cf s. 40 of the Companies Act, 1867 (30 & 31 Vict, c 131).

(Part IV.—*Winding-up of Companies and Associations under this Act.*  
Secs 133-137)

present wind-  
ing-up peti-  
tion

the Company are reduced in number to less than seven, or unless the shares in respect of which he is a contributory, or some of them, either were originally allotted to him, or have been held by him, and registered in his name, for a period of at least six months during the eighteen months previous to the commencement of the winding-up, or have devolved upon him through the death of a former holder:

Provided that, where a share has, during the whole or any part of the six months, been held by or registered in the name of the wife of a contributory either before or after her marriage, or by or in the name of any trustee for such wife, or for the contributory, such share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the contributory.

Commence-  
ment of  
winding-up  
by Court

**133.** A winding-up of a Company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding-up

Court may  
grant  
injunction

**134.** The Court may, at any time after the presentation of the petition for winding-up a Company under this Act, and before making an order for winding-up the Company, upon the application of the Company or of any creditor or contributory of the Company, restrain further proceedings in any suit or proceeding against the Company, upon such terms as the Court thinks fit.

The Court may also, at any time after the presentation of such petition, and before the first appointment of liquidators, appoint provisionally an official liquidator of the estate and effects of the Company.

Course to be  
pursued by  
Court on  
hearing  
petition

**135.** Upon hearing the petition, the Court may dismiss the same with or without costs, may adjourn the hearing conditionally or unconditionally, and may make any interim order or any other order that it deems just.

Suits to be  
stayed after  
order for  
winding-up

**136.** When an order has been for winding-up a Company under this Act, a copy of such order shall forthwith be forwarded by the Company against the Company except with the leave of the Court and subject to such terms as the Court may impose.

Copy of order  
to be for-  
warded to  
Registrar.

**137.** When an order has been made for winding-up a Company under this Act, a copy of such order shall forthwith be forwarded by the Company to the Registrar of Joint-Stock Companies, who shall make a minute thereof in his books relating to the Company.

Such order shall be deemed to be notice of discharge to the servants of the Company, except when the business of the Company is continued.

(Part IV.—*Winding-up of Companies and Associations under this Act.*  
Secs. 138-141.)

138. Such Court may, at any time after an order has been made for winding-up a Company, upon the application of any creditor or contributory of the Company, and upon proof to the satisfaction of the Court that all proceedings in relation to such winding-up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as it deems fit

Power of  
Court to stay  
proceedings

139. When an order has been made for winding-up a Company limited by guarantee and having a capital divided into shares, any share-capital that may not have been called up shall be deemed to be assets of the Company and to be a debt due to the Company from each member to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the Court.

Effect of  
order on  
share capital  
of Company  
limited by  
guarantee.

140. The Court may, as to all matters relating to the winding-up, have regard to the wishes of creditors or contributories as proved to it by any sufficient evidence, and may, if it thinks fit, direct meetings of the creditors or contributories to be summoned, held and conducted in such manner as the Court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court.

Court may  
have regard  
to wishes of  
creditors or  
contribu-  
tories

In the case of creditors, regard is to be had to the value of the debts due to each creditor, and, in the case of contributories, to the number of votes conferred on each contributory by the regulations of the Company.

#### *Official Liquidators.*

141. For the purpose of conducting the proceedings in winding-up a Company and assisting the Court therein, there may be appointed a person or persons, to be called an official liquidator or official liquidators

Appointment  
of official  
liquidator

The Court may appoint such person or persons, either provisionally or otherwise, as it thinks fit, to the office of official liquidator, or official liquidators.

In all cases, if more persons than one are appointed to the office of official liquidator, the Court shall declare whether any act hereby required or authorized to be done by the official liquidator is to be done by all or any one or more of such persons.

The Court may also determine whether any, and what, security is to be given by any official liquidator on his appointment

If no official liquidator is appointed, or during any vacancy in such appointment, all the property of the Company shall be deemed to be in the custody of the Court.

(Part IV.—*Winding-up of Companies and Associations under this Act.*  
Secs. 142-144)

A receiver shall not be appointed of assets in the hands of an official liquidator.

Resignations,  
removals,  
filling up  
vacancies  
and compen-  
sation

142. Any official liquidator may resign or be removed by the Court on due cause shown. Any vacancy in the office of an official liquidator appointed by the Court shall be filled up by the Court. There shall be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct; and, if more liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportions as the Court directs.

Style and  
duties of  
official liquid-  
ators

143. The official liquidator shall be described by the style of the official liquidator of the particular Company in respect of which he is appointed, and not by his individual name. He shall take into his custody, or under his control, all the property, effects and actionable claims to which the Company is or appears to be entitled, and shall perform such duties in reference to the winding-up of the Company as may be imposed by the Court.

Powers of  
official liquid-  
ator.

144. The official liquidator shall have power, with the sanction of the Court, to do the following things.—

- (a) to bring or defend any suit or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the Company;
- (b) to carry on the business of the Company so far as may be necessary for the beneficial winding-up of the same;
- (c) to sell the immoveable and moveable property of the Company by public auction or private contract, with power to transfer the whole thereof to any person or Company, or to sell the same in parcels;
- (d) to do all acts, and to execute, in the name and on behalf of the Company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the Company's seal;
- (e) to prove, rank, claim and draw a dividend in the matter of the insolvency of any contributory, for any balance against the estate of such contributory, and to take and receive dividends in respect of such balance, in the matter of the insolvency, as a separate debt due from such insolvent, and rateably with the other separate creditors;
- (f) to draw, accept, make and endorse any bill of exchange, hundí or promissory note in the name and on behalf of the Company, also

(Part IV.—Winding-up of Companies and Associations under this Act.  
Secs. 145-147.)

to raise, upon the security of the assets of the Company, from time to time, any requisite sum or sums of money; and the drawing, accepting, making or endorsing of every such bill, hundi or note as aforesaid on behalf of the Company shall have the same effect with respect to the liability of such Company as if such bill, <sup>1</sup>[hundi] or note had been drawn, accepted, made or endorsed by or on behalf of such Company in the course of carrying on the business thereof;

- (g) to take out, if necessary, in his official name, letters of administration to the estate of any deceased contributory, and to do, in his official name, any other act that may be necessary for obtaining payment of any moneys due from a contributory or from his estate, and which act cannot be conveniently done in the name of the Company; and, in all cases where he takes out letters of administration, or otherwise uses his official name for obtaining payment of any moneys due from a contributory, such moneys shall, for the purpose of enabling him to take out such letters or recover such moneys, be deemed to be due to the official liquidator himself: Provided that nothing herein contained shall be deemed to affect the rights, duties and privileges of the Administrators General of Bengal, Madras and Bombay respectively;
- (h) to do and execute all such other things as may be necessary for winding-up the affairs of the Company and distributing its assets.

145. The Court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the Court, and, where an official liquidator is provisionally appointed, may limit and restrict his powers by the order appointing him.

Discretion of official liquidator.

146. The official liquidator may, with the sanction of the Court, appoint an attorney or vakil to assist him in the performance of his duties: Provided that, where the official liquidator is an attorney, he shall not appoint his partner, unless the latter consents to act without remuneration.

Appointment of attorney or vakil to official liquidator.

#### *Ordinary Powers of Court.*

147. As soon as may be after making an order for winding-up the Company, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where such rectification is

Collection and application of assets

<sup>1</sup> The word "hundi" was inserted by the Repealing and Amending Act, 1891 (XII of 1891) Printed, General Acts, Vol VI

(Part IV.—*Winding-up of Companies and Associations under this Act.*  
Secs. 148-151.)

required in pursuance of section 58, and shall cause the assets of the Company to be collected and applied in discharge of its liabilities existing at the date of the said order.

Provision as  
to represent-  
ative contri-  
butories

148. In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right, and persons who are contributories as being representatives of, or being liable to the debts of, others.

Power of  
Court to re-  
quire deli-  
very of prop-  
erty

149. The Court may, at any time after making an order for winding-up a Company, require any contributory for the time being settled on the list of contributories, trustee, receiver, banker or agent or officer of the Company to pay, deliver, convey, surrender or transfer forthwith, or within such time as the Court directs, to or into the hands of the official liquidator, any sum or balance, books, papers, estate or effects which happen to be in his hands for the time being, and to which the Company is *primâ facie* entitled.

Power of  
Court to or-  
der payment  
of debts by  
contributory

150. The Court may, at any time after making an order for winding-up the Company, make an order on any contributory for the time being settled on the list of contributories directing payment to be made, in manner in the said order mentioned, of any moneys due from him or from the estate of the person whom he represents to the Company, exclusive of any moneys which he, or the estate of the person whom he represents, may be liable to contribute by virtue of any call made or to be made by the Court in pursuance of this part of this Act.

The Court may, in making such order, when the Company is not limited, allow to such contributory, by way of set-off, any moneys due to him or the estate which he represents from the Company, on any independent dealing or contract with the Company, but not any moneys due to him as a member of the Company in respect of any dividend or profits:

Provided that, when all the creditors of any Company, whether limited or unlimited, are paid in full, any moneys due on any account whatever to any contributory from the Company may be allowed to him by way of set-off against any subsequent call or calls

In the event of the winding-up of any limited Company, the Court, if it thinks fit, may make to any director or manager of such Company whose liability is unlimited the same allowance by way of set-off as under this section it may make to a contributory where the Company is not limited.

Power of  
Court to  
make calls

151. The Court may, at any time after making an order for winding-up a Company, and either before or after it has ascertained the sufficiency of the assets of the Company, make calls on, and order payment thereof by,

(Part IV.—*Winding-up of Companies and Associations under this Act.*  
Secs. 152-156.)

all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, for payment of all or any sums it deems necessary to satisfy the debts and liabilities of the Company, and the costs, charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves.

The Court may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same.

152. The Court may order any contributory, purchaser or other person from whom money is due to the Company to pay the same into the Bank of Bengal, the Bank of Madras or the Bank of Bombay, as the case may be, or any branch thereof respectively, to the account of the official liquidator instead of to the official liquidator; and such order may be enforced in the same manner as if it had directed payment to the official liquidator.

Power of Court to order payment into Bank.

153. All moneys, bills, hundis, notes and other securities paid and delivered into the Bank of Bengal, the Bank of Madras or the Bank of Bombay, or any branch thereof respectively, in the event of a Company being wound-up by the Court, shall be subject to such order and regulation for the keeping of the account of such moneys and other effects, and for the payment and delivery in, or investment and payment and delivery out, of the same as the Court may direct.

Regulation of account with Court.

154. If any person made a contributory as personal representative of a deceased contributory makes default in paying any sum ordered to be paid by him, proceedings may be taken for administering the property of such deceased contributory, whether moveable or immoveable, or both, and of compelling payment thereof of the moneys due

Provision in case of representative contributory not paying moneys ordered

155. Any order made by the Court in pursuance of this Act upon any contributory shall, subject to the provisions herein contained for appealing against such order, be conclusive evidence that the moneys, if any, thereby appearing to be due or ordered to be paid are due; and all other pertinent matters stated in such order are to be taken to be truly stated as against all persons and in all proceedings whatsoever.

Order conclusive evidence.

156. The Court may fix a certain day or certain days on or within which creditors of the Company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debts are proved.

Court may exclude creditors not proving within certain time.

(Part IV.—*Winding-up of Companies and Associations under this Act.*  
Secs 157-163.)

Court to  
adjust rights  
of contribu-  
tories.

157. The Court shall adjust the rights of the contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto.

Court to  
order costs.

158. The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the Company of the costs, charges and expenses incurred in winding-up any Company in such order of priority as the Court thinks just.

Dissolution  
of Company.

159. When the affairs of the Company have been completely wound up, the Court shall make an order that the Company be dissolved from the date of such order, and the Company shall be dissolved accordingly.

Registrar to  
make minute  
of dissolution  
of Company.

160. Any order so made shall be reported by the official liquidator to the Registrar, who shall make a minute accordingly in his books of the dissolution of such Company.

Penalty for  
not reporting  
dissolution of  
Company

161. If the official liquidator makes default in reporting to the Registrar, in the case of a Company being wound up by the Court, the order that the Company be dissolved, he shall be liable to a penalty not exceeding one hundred rupees for every day during which he is so in default.

*Extraordinary Powers of Court.*

Power of  
Court to sum-  
mon persons  
before it sus-  
pected of  
having prop-  
erty of  
Company.

162. The Court may, after it has made an order for winding-up the Company, summon before it any officer of the Company, or person known or suspected to have in his possession any of the estate or effects of the Company, or supposed to be indebted to the Company, or any person whom the Court may deem capable of giving information concerning the trade, dealings, estate or effects of the Company.

If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, having no lawful impediment (made known to the Court at the time of its sitting and allowed by it), the Court may cause such person to be apprehended and brought before the Court for examination.

The Court may require any such officer or person to produce any documents in his custody or power relating to the Company. Nevertheless, in cases where any person claims any lien on documents produced by him, such production shall be without prejudice to such lien, and the Court shall have jurisdiction in the winding-up to determine all questions relating to such lien.

Examination  
of parties by  
Court.

163. The Court may examine upon oath, either by word of mouth or upon written interrogatories, any person appearing or brought before it in

(Part IV.—Winding-up of Companies and Associations under this Act.  
(Secs. 164-168)

manner aforesaid concerning the affairs, dealings, estate or effects of the Company, and may reduce into writing the answers of every such person, and require him to subscribe the same.

164. The Court may, at any time before or after it has made an order for winding-up a Company, upon proof being given that there is probable cause for believing that any contributory to such Company is about to quit British India or otherwise abscond, or to remove or conceal any of his goods or chattels, for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the Company, cause such contributory to be arrested, and his books, papers, moneys, securities for moneys, goods and chattels to be seized, and him and them to be safely kept until such time as the Court may order.

Power to arrest contributory about to abscond or to remove or conceal any of his property.

165. Any powers by this Act conferred on the Court shall be deemed to be in addition to, and not in restriction of, any other powers subsisting of instituting proceedings against any contributory, or the estate of any contributory, or against any debtor of the Company, for the recovery of any call or other sums due from such contributory or debtor, or his estate; and such proceedings may be instituted accordingly.

Powers of Court cumulative.

#### *Enforcement of, and Appeal from, Orders.*

166. All orders made by a Court under this Act may be enforced in the same manner in which decrees of such Court made in any suit pending therein may be enforced.

Power to enforce orders.

167. Any order made by a Court for or in the course of the winding-up of a Company under this Act shall be enforced in any part of British India, other than that in which such Court is situate, in the Court that would have had jurisdiction in respect of such Company if the registered office of the Company had been situate in such other part, and in the same manner in all respects as if such order had been made by the Court that is hereby required to enforce the same.

Order made in any Court to be enforced by other Courts.

168. Where any order or decree made by one Court is required to be enforced by another Court as hereinbefore provided, a certified copy of the order or decree so made shall be produced to the proper officer of the Court required to enforce the same, and the production of such certified copy shall be sufficient evidence of such order or decree having been made; and thereupon such last-mentioned Court shall take such steps in the matter as may be requisite for enforcing such order or decree, in the same manner as if it were the order or decree of the Court enforcing the same.

Mode of dealing with orders to be enforced by other Courts.

(Part IV.—*Winding-up of Companies and Associations under this Act.*  
*Secs. 169-171*)

Appeals from  
orders.

169. Re-hearings of, and appeals from, any order or decision made or given in the matter of the winding-up of a Company by the Court may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction, subject to this restriction, that no such re-hearing or appeal shall be heard unless notice of the same is given within three weeks after any order complained of has been made, in manner in which notices of appeal are ordinarily given under the Code of Civil Procedure<sup>1</sup> unless such time is extended by the Court of appeal

Judicial notice to be taken of signature of officers

170. In all proceedings under this Part of this Act, every Court, Judge and person judicially acting, and all other officers, judicial or ministerial, of any Court, or employed in enforcing the process of any Court, shall take judicial notice of the signature of any officer of any other Court, and also of the official seal of any other Court, when such seal is appended to any document made, issued or signed under the provisions of this Part of this Act, or any official copy thereof. \*

Special Commissioners for receiving evidence

171. The Judges of the District Courts, who sit at places more than twenty English miles from the usual place of sitting of the High Court, shall be Commissioners for the purpose of taking evidence under this Act in cases where any Company is wound up in a High Court; and it shall be lawful for the High Court to refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed Commissioner, although such Commissioner is out of the jurisdiction of the Court that made the order or decree for winding-up the Company.

Every such Commissioner shall, in addition to any power of summoning and examining witnesses and requiring the production or delivery of documents and certifying or punishing defaults by witnesses, which he might lawfully exercise as a Judge of a District Court, have, in the matter so referred to him, all the same powers of summoning and examining witnesses, and requiring the production or delivery of documents, and punishing defaults by witnesses, and allowing costs and charges and expenses to witnesses, as the Court which made the order for winding-up the Company has, and the examination so taken shall be returned or reported to such last-mentioned Court in such manner as it directs.

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<sup>1</sup> See now Act XIV of 1882, printed, *infra*, p 262

(Part IV.—*Winding-up of Companies and Associations under this Act.*  
Secs 172-174.)

172 If any affidavit, affirmation or declaration, required to be sworn or made under the provisions or for the purposes of this Part of this Act, be lawfully sworn or made in British India, or in Great Britain or Ireland, or in any colony, island, plantation or place under the dominion of Her Majesty in foreign parts, before any Court, Judge or person lawfully authorized to take and receive affidavits, affirmations or declarations, or before any of Her Majesty's Consuls or Vice-Consuls in any foreign parts out of Her Majesty's dominions, all Courts, Judges, Justices, Commissioners and persons acting judicially in British India shall take judicial notice of the seal or stamp or signature (as the case may be) of any such Court, Judge, person, Consul or Vice-Consul, attached, appended or subscribed to any such affidavit, affirmation or declaration, or to any other document to be used for the purposes of this Part of this Act.

Affidavits,  
etc., may be  
sworn in  
British India,  
Great Britain  
or Ireland,  
or abroad,  
before any  
competent  
Court or  
person.

*Voluntary winding-up of Company.*

173. A Company under this Act may be wound up voluntarily—

- (a) whenever the period, if any, fixed for the duration of the Company by the articles of association expires, or whenever the event, if any, occurs upon the occurrence of which it is provided by the articles of association that the Company is to be dissolved, and the Company in general meeting has passed a resolution requiring the Company to be wound up voluntarily;
- (b) whenever the Company has passed a special resolution requiring the Company to be wound up voluntarily;
- (c) whenever the Company has passed an extraordinary resolution to the effect that it has been proved to its satisfaction that the Company cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same:

Circum-  
stances under  
which Com-  
pany may be  
wound up  
voluntarily.

For the purposes of this Act any resolution shall be deemed to be extraordinary which is passed in such manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution as hereinbefore defined.

174. A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution authorizing such winding-up. When the winding-up is in pursuance of a special resolution, it shall be deemed to commence at the time of the passing, under section 77, of the confirmatory resolution.

Commence-  
ment of vol-  
untary  
winding-up.

(Part IV.—*Winding-up of Companies and Associations under this Act.*  
Secs 175-177.)

Effect of  
voluntary  
winding-up  
on status of  
Company.

175. Whenever a Company is wound up voluntarily the Company shall, from the date of the commencement of such winding-up, cease to carry on its business except in so far as may be required for the beneficial winding-up thereof; and all transfers of shares, except transfers made to or with the sanction of the liquidators, or alteration in the status of the members of the Company, taking place after the commencement of such winding-up, shall be void; but its corporate state and all its corporate powers shall, notwithstanding that its regulations otherwise provide, continue until the affairs of the Company are wound up.

Notice of  
resolution  
to wind-up  
voluntarily

176. Notice of any special resolution or extraordinary resolution passed for winding-up a Company voluntarily shall be given by advertisement in the local official Gazette, and also in some newspaper (if any) circulating in the place where the registered office of the Company is situate.

Consequence  
of voluntary  
winding-up.

177. The following consequences shall ensue upon the voluntary winding-up of a Company:—

- (a) the assets of the Company shall be applied in satisfaction of its liabilities *pari passu* as they exist at the commencement of the winding-up, and subject thereto shall, unless the regulations of the Company otherwise provide, be distributed amongst the members according to their rights and interests in the Company:
- (b) liquidators shall be appointed for the purpose of winding-up the affairs of the Company and distributing the assets:
- (c) the Company in general meeting shall appoint such persons as it thinks fit to be liquidators, and may fix the remuneration to be paid to them:
- (d) if one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him:
- (e) upon the appointment of liquidators, all the powers of the directors shall cease, except in so far as the Company in general meeting, or the liquidators, may sanction the continuance of such powers:
- (f) when several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two:
- (g) the liquidators may, without the sanction of the Court, exercise all powers by this Act given to the official liquidators:

(Part IV—Winding-up of Companies and Associations under this Act.  
Secs. 178-180.)

- (h) the liquidators may exercise the powers hereinbefore given to the Court of settling the list of contributories of the Company, and any list so settled shall be *prima facie* evidence of the liability of the persons named therein to be contributories.
- (i) the liquidators may, at any time after the passing of the resolution for winding-up the Company, and before they have ascertained the sufficiency of the assets of the Company, call on all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, to pay all or any sums they deem necessary to satisfy the debts and liabilities of the Company, and the costs, charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves; and the liquidators may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same:
- (j) the liquidators shall pay the debts of the Company, and adjust the right of the contributories amongst themselves.

**178.** Where a Company limited by guarantee and having a capital divided into shares is being wound up voluntarily, any share-capital that may not have been called up shall be deemed to be assets of the Company, and to be a debt due from each member to the Company to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the liquidators.

Effect of winding-up on share-capital of Company limited by guarantee.

**179.** A Company about to be wound up voluntarily, or in the course of being wound up voluntarily, may, by an extraordinary resolution, delegate to its creditors, or to any committee of its creditors, the power of appointing liquidators or any of them, and supplying any vacancies in the appointment of liquidators, or may, by a like resolution, enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised.

Power of Company to delegate authority to appoint liquidators.

Any act done by the creditors in pursuance of such delegated power shall have the same effect as if it had been done by the Company.

**180.** Any arrangement which a Company about to be wound up voluntarily, or in the course of being wound up voluntarily, shall have entered into with its creditors shall be binding on the Company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors, subject to such right of appeal as is hereinafter mentioned.

Arrangement when binding on creditors

Power of  
creditor or  
contributory  
to appeal.

181. Any creditor or contributory of a Company that has in manner aforesaid entered into any arrangement with its creditors may, within three weeks from the date of the completion of such arrangement, appeal to the Court against such arrangement, and the Court may thereupon, as it thinks just, amend, vary or confirm the same.

Power for li-  
quidators or  
contribu-  
tories in vol-  
untary wind-  
ing-up to  
apply to  
Court.

182. Where a Company is being wound up voluntarily, the liquidators or any contributory of the Company may apply to the Court to determine any question arising in the matter of such winding-up, or to exercise, as respects the enforcing of calls or in respect of any other matter, all or any of the powers which the Court might exercise if the Company were being wound up by the Court. Any such application may be made by motion. The Court, if satisfied that the determination of such question or the required exercise of power will be just and beneficial, may accede, wholly or partially, to such application, on such terms and subject to such conditions as the Court thinks fit, or it may make such other order or decree on such application as the Court thinks just.

Power of li-  
quidators to  
call general  
meeting

183. Where a Company is being wound up voluntarily, the liquidators may, from time to time, during the continuance of such winding-up, summon general meetings of the Company for the purpose of obtaining the sanction of the Company by special resolution or extraordinary resolution, or for any other purposes they think fit.

In the event of the winding-up continuing for more than one year, the liquidators shall summon a general meeting of the Company at the end of the first year and of each succeeding year from the commencement of the winding-up, or as soon thereafter as may be convenient, and shall lay before such meeting an account showing their acts and dealings, and the manner in which the winding-up has been conducted, during the preceding year.

Power to fill  
up vacancy  
in office of  
liquidators.

184. If any vacancy occurs in the office of liquidators appointed by the Company, by death, resignation or otherwise, the Company in general meeting may, subject to any arrangement they may have entered into with their creditors, fill up such vacancy; and a general meeting for the purpose of filling-up such vacancy may be convened by the continuing liquidators, if any, or by any contributory of the Company, and shall be deemed to have been duly held if held in manner prescribed by the regulations of the Company, or in such other manner as may, on application by the continuing liquidator, if any, or by any contributory of the Company, be determined by the Court.

(Part IV.—*Winding-up of Companies and Associations under this Act.*  
Secs. 185-190)

185. If, from any cause whatever, there is no liquidator acting in the case of a voluntary winding-up, the Court may, on the application of a contributory, appoint a liquidator or liquidators. The Court may also, on due cause shown, remove any liquidator and appoint another liquidator to act in the matter of a voluntary winding-up.

Power of Court to appoint liquidators.

186. As soon as the affairs of the Company are fully wound up, the liquidators shall make up an account showing the manner in which such winding-up has been conducted and the property of the Company disposed of: and thereupon they shall call a general meeting of the Company for the purpose of having the account laid before them, and hearing any explanation that may be given by the liquidators.

Liquidators on conclusion of winding-up to make up an account.

The meeting shall be called by advertisement specifying the time, place and object of such meeting, and such advertisement shall be published one month at least previously to the meeting in the manner specified in section 176.

187. The liquidators shall make a return to the Registrar of such meeting having been held, and of the date at which the same was held; and, on the expiration of three months from the date of the registration of such return, the Company shall be deemed to be dissolved.

Liquidators to report meeting to Registrar.

If the liquidators make default in making such return to the Registrar, they shall incur a penalty not exceeding fifty rupees for every day during which such default continues.

188. All costs, charges and expenses properly incurred in the voluntary winding-up of a Company, including the remuneration of the liquidators, shall be payable out of the assets of the Company in priority to all other claims.

Costs of voluntary liquidation.

189. The voluntary winding-up of a Company shall not be a bar to the right of any creditor of such Company to have the same wound up by the Court, if the Court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding-up.

Saving of rights of creditors.

190. Where a Company is in course of being wound up voluntarily, and proceedings are taken for the purpose of having the same wound up by the Court, the Court may, if it thinks fit, notwithstanding that it makes an order directing the Company to be wound up by the Court, provide in such order or in any other order for the adoption of all or any of the proceedings taken in the course of the voluntary winding-up.

Power of Court to adopt proceedings of voluntary winding-up.

(Part IV.—*Winding-up of Companies and Associations under this Act.*  
Secs. 191-195 )

*Winding-up subject to the Supervision of the Court.*

Power of  
Court, on ap-  
plication, to  
direct wind-  
ing-up sub-  
ject to super-  
vision

191. When a resolution has been passed by a Company to wind up voluntarily, the Court may make an order directing that the voluntary winding-up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others to apply to the Court, and generally upon such terms and subject to such conditions, as the Court thinks just.

Petition for  
winding-up  
subject to  
supervision

192. A petition praying wholly or in part that a voluntary winding-up shall continue, but subject to the supervision of the Court, and which winding-up is hereinafter referred to as a winding-up subject to the supervision of the Court, shall, for the purpose of giving jurisdiction to the Court over suits, be deemed to be a petition for winding-up the Company by the Court

Court may  
have regard  
to wishes of  
creditors

193. The Court may, in determining whether a Company is to be wound up altogether by the Court, or subject to the supervision of the Court, in the appointment of a liquidator or of liquidators, and in all other matters relating to the winding-up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence, and may direct meetings of the creditors or contributories to be summoned, held and regulated in such manner as the Court directs for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court.

In the case of creditors, regard shall be had to the value of the debts due to each creditor, and, in the case of contributories, to the number of votes conferred on each contributory, by the regulations of the Company.

Power to  
Court to  
appoint  
additional  
liquidator in  
winding-up  
subject to  
supervision

194. Where any order is made by the Court for a winding-up subject to the supervision of the Court, the Court may, in such order or in any subsequent order, appoint any additional liquidator.

Any liquidator so appointed by the Court shall have the same powers, be subject to the same obligations, and in all respects stand in the same position, as if he had been appointed by the Company.

The Court may, from time to time, remove any liquidator so appointed by the Court, and fill up any vacancy occasioned by such removal, or by death or resignation.

Effect of  
order of  
Court for  
winding-up

195. Where an order is made for a winding-up subject to the supervision of the Court, the liquidator appointed to conduct such winding-up may, subject to any restrictions imposed by the Court, exercise all his powers,

(Part IV.—Winding-up of Companies and Associations under this Act.  
Secs 196-199)

without the sanction or intervention of the Court, in the same manner as if the Company were being wound up altogether voluntarily. subject to supervision.

Save as aforesaid, any order made by the Court for a winding-up subject to the supervision of the Court shall for all purposes, including the staying of suits and other proceedings, be deemed to be an order of the Court for winding-up the Company by the Court, and shall confer full authority on the Court to make calls, or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding-up the Company altogether by the Court.

In the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidators, the expression "official liquidator" shall be deemed to mean the liquidator conducting the winding-up subject to the supervision of the Court

196. Where an order has been made for the winding-up of a Company subject to the supervision of the Court, and such order is afterwards superseded by an order directing the Company to be wound up compulsorily, the Court may, in such last-mentioned order or in any subsequent order, appoint the voluntary liquidators or any of them, either provisionally or permanently, and either with or without the addition of any other person, to be official liquidators. Appointment in certain cases of voluntary liquidators to office of official liquidators.

#### *Supplemental Provisions.*

197. Where any Company is being wound up by the Court or subject to the supervision of the Court, all dispositions of the property of the Company, and every transfer of shares or alteration in the status of the members of the Company, made between the commencement of the winding-up and the order for winding-up, shall, unless the Court otherwise orders, be void. Dispositions after commencement of winding-up avoided.

198. Where any Company is being wound up, all books, accounts and documents of the Company and of the liquidators shall, as between the contributories of the Company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded. Books of Company to be evidence.

199. Where any Company has been wound up under this Act and is about to be dissolved, the books, accounts and documents of the Company and of the liquidator may be disposed of in the following way, that is to say, where the Company has been wound up by, or subject to the supervision of, the Court, in such way as the Court directs, and, where the Company has been wound up voluntarily, in such way as the Company by an extraordinary resolution directs. Disposal of books, accounts and documents of Company.

(Part IV — *Winding-up of Companies and Associations under this Act.*  
Secs. 200-200A )

But, after the lapse of five years from the date of such dissolution, no responsibility shall rest on the Company or the liquidators, or any one to whom the custody of such books, accounts and documents has been committed, by reason that the same or any of them cannot be made forthcoming to any party or parties claiming to be interested therein

Inspection of  
books.

200. Where an order has been made for winding-up a Company by the Court or subject to the supervision of the Court, the Court may make such order for the inspection by the creditors and contributories of the Company of its books and papers as the Court thinks just, and any books and papers in the possession of the Company may be inspected by creditors or contributories in conformity with the order of the Court, but not further or otherwise

Priority of  
debts.

<sup>1</sup>200A. (1) In the distribution of the assets of any Company being wound up under this Act, there shall be paid in priority to all other debts—

- (a) all revenue, taxes, cesses and rates, whether payable to Her Majesty or to a local authority, due from the Company at the date of the commencement of the winding-up, and having become due and payable within the twelve months next before that date;
- (b) all wages or salary of any clerk or servant in respect of service rendered to the Company within the two months next before the commencement of the winding-up, not exceeding one thousand rupees for each clerk or servant, and
- (c) all wages of any labourer or workman, not exceeding five hundred rupees for each, whether payable for time or piece-work, in respect of services rendered to the Company within the two months next before the commencement of the winding-up

(2) The foregoing debts shall rank equally among themselves, and shall be paid in full, unless the assets of the Company are insufficient to meet them, in which case they shall abate in equal proportions among themselves.

(3) Subject to the retention of such sums as may be necessary for the cost of administration or otherwise, the liquidator or official liquidator shall discharge the foregoing debts forthwith, so far as the assets of the Company are and will be sufficient to meet them, as and when the assets come into the hands of the liquidator or official liquidator.

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<sup>1</sup> S 200A was inserted by the Indian Companies Act (1882) Amendment Act, 1887 (VI of 1887), printed, General Acts, Vol V

(Part IV—Winding-up of Companies and Associations under this Act.  
Secs 201-203)

**201.** The liquidator may, with the sanction of the Court where the Company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the Company where the Company is being wound up altogether voluntarily, pay any classes of creditors in full, or make such compromise or other arrangement as the liquidator may deem expedient with creditors or persons claiming to be creditors, or persons having or alleging themselves to have any claim, present or future, whereby the Company may be rendered liable

General  
scheme of  
liquidation  
may be  
sanctioned.

**202.** The liquidator may, with the sanction of the Court where the Company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the Company where the Company is being wound up altogether voluntarily, compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, whether present or future, subsisting or supposed to subsist between the Company and any contributory or alleged contributory, or other debtor or person apprehending liability to the Company, and all questions in any way relating to or affecting the assets of the Company, or the winding-up of the Company, generally upon such terms as may be agreed upon, with power for the liquidator to take any security for the discharge of such debts or liabilities, and to give complete discharges in respect of all or any such calls, debts or liabilities.

Power to  
compromise.

**203.** Where any compromise or arrangement shall be proposed between a Company which is, at the commencement of this Act or afterwards, in the course of being wound up either voluntarily or by or under the supervision of the Court, and the creditors of such Company, or any class of such creditors, it shall be lawful for the Court, in addition to any other of its powers, on the application in a summary way of any creditor or the liquidator, to order that a meeting of such creditors or class of creditors shall be summoned in such manner as the Court shall direct; and, if a majority in number, representing three-fourths in value, of such creditors or class of creditors present either in person or by proxy at such meeting shall agree to any arrangement or compromise, such arrangement or compromise shall, if sanctioned by an order of the Court, be binding on all such creditors, or class of creditors, as the case may be, and also on the liquidator and contributories of the said Company.

Where com-  
promise pro-  
posed, Court  
may order a  
meeting of  
creditors,  
etc., to decide  
as to such  
compromise.

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<sup>1</sup> Cf s 2 of the Life Assurance Companies Act, 1870 (33 & 34 Vict, c 61).

(Part IV.—*Winding-up of Companies and Associations under this Act.*  
Sec. 204.)

Power for  
liquidators to  
accept shares,  
etc., as a  
consideration  
for sale of  
property of  
Company

204. Where any Company is proposed to be, or is in the course of being, wound up altogether voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another Company, the liquidators of the first-mentioned Company may, with the sanction of a special resolution of the Company by whom they were appointed, conferring either a general authority on the liquidators or an authority in respect of any particular arrangement, receive, in compensation or part compensation for such transfer or sale, shares, debentures, policies or other like interests in such other Company, for the purpose of distribution amongst the members of the Company being wound up, or may enter into any other arrangement whereby the members of the Company being wound up may, in lieu of receiving cash, shares, debentures, policies or other like interests, or in addition thereto, participate in the profits of, or receive any other benefit from, the purchasing Company.

Any sale made, or arrangement entered into, by the liquidator in pursuance of this section shall be binding on the members of the Company being wound up; subject to this proviso that, if any member of the Company being wound up, who has not voted in favour of the special resolution passed by the Company of which he is a member at either of the meetings held for the passing of the same, expresses his dissent from any such special resolution in writing addressed to the liquidators or one of them, and left at the registered office of the Company not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient member may, by writing addressed and left as last aforesaid, require the liquidator to do one of the following things as the liquidator may prefer (that is to say):—either to abstain from carrying such resolution into effect, or to purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned; such purchase-money to be paid before the Company is dissolved, and to be raised by the liquidator in such manner as may be determined by special resolution.

No special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to, or concurrently with, any resolution for winding-up the Company or for appointing liquidators; but, if an order be made within a year for winding-up the Company by or subject to the supervision of the Court, such resolution shall not be of any validity unless it is sanctioned by the Court.

(Part IV.—*Winding-up of Companies and Associations under this Act.*  
*Secs 205-208.*)

205. The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement. If the parties dispute about the same, such dispute shall be settled by arbitration under the provisions next hereinafter contained.

Mode of  
determining  
price.

206. When any dispute so directed to be settled by arbitration has arisen, then unless both parties concur in the appointment of a single arbitrator, each party, on the request of the other party, shall by writing under his hand nominate and appoint an arbitrator to whom such dispute shall be referred

Appointment  
of arbitrator  
when ques-  
tions are to  
be determin-  
ed by arbi-  
tration

After any such appointment has been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as such revocation.

If for the space of fourteen days after any such dispute has arisen, and after a request in writing has been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters in dispute; and in such case the award or determination of such single arbitrator shall be final

207. If, before the matters so referred are determined, any arbitrator appointed by either party die, or become incapable or refuse, or for seven days neglect, to act as arbitrator, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place; and if, for the space of seven days after notice in writing from the other party for that purpose, he fail to do so, the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death, refusal or disability as aforesaid.

Vacancy of  
arbitrator to  
be supplied.

208. Where more arbitrators than one have been appointed, they shall, before entering upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ.

Appointment  
of umpire.

If such umpire die, or refuse, or for seven days neglect, to act, they shall forthwith, after such death, refusal or neglect, appoint another umpire in his place; and the decision of every such umpire, on the matters so referred to him, shall be final.

(Part IV.—*Winding-up of Companies and Associations under this Act.*  
*Secs 209-213.*)

Power of  
arbitrators to  
call for  
books, etc

**209.** The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath.

Costs to be  
in discretion  
of arbitra-  
tors

**210.** The costs of and attending every such arbitration to be determined by the arbitrators shall be in the discretion of the arbitrators or their umpire, as the case may be.

Submission  
to arbitration  
may be filed  
in Court

**211.** On the application of either of the parties, the submission to any such arbitration may be filed in the Court, and an order of reference may be made thereon; and the provisions of the Code of Civil Procedure<sup>1</sup> shall, so far as the same are applicable, apply to every such order and to all proceedings thereunder.

Certain  
attachments,  
distresses and  
executions to  
be void.

**212.** Where any Company is being wound up by the Court or subject to the supervision of the Court, any attachment, distress or execution put in force, without the leave of the Court, against the estate or effects of the Company after the commencement of the winding-up shall be void.

Nothing in this section applies to proceedings by the Government.

Fraudulent  
preference

**213.** Every conveyance, mortgage, delivery of goods, payment, execution or other act relating to property, which would, if made or done by, or against any individual trader, be deemed, in the event of his insolvency, to have been made or done by way of undue or fraudulent preference of the creditors of such trader, shall, if made or done by or against any Company, be deemed, in the event of such Company being wound up under this Act, to have been made or done by way of undue or fraudulent preference of the creditors of such Company, and shall be invalid accordingly

For the purposes of this section the making of an application for winding-up a Company shall, in the case of a Company being wound up by the Court or subject to the supervision of the Court and a resolution for winding-up the Company shall, in the case of a voluntary winding-up, be deemed to correspond with the act of insolvency in the case of an individual trader; and any conveyance or assignment made by any Company formed under this Act, of all its estate and effects to trustees for the benefit of all its creditors, shall be void.

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<sup>1</sup> See now Act XIV of 1882, printed, *infra*, p 262.

(Part IV.—*Winding-up of Companies and Associations under this Act.*  
Secs. 214-216)

214. Where, in the course of the winding-up of any Company under this Act, it appears that any past or present director, manager, official or other liquidator, or any officer of such Company, has misapplied or retained in his own hands, or become liable or accountable for, any moneys of the Company, or been guilty of any misfeasance or breach of trust in relation to the Company, the Court may, on the application of any liquidator or of any creditor or contributory of the Company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such director, manager or other officer, and compel him to repay any moneys so misapplied or retained, or for which such officer has become liable or accountable, together with interest after such rate as the Court thinks just, or to contribute such sums of money to the assets of the Company by way of compensation in respect of such misapplication, retainer, misfeasance or breach of trust as the Court thinks just

Power of  
Court to  
assess  
damages  
against  
delinquent  
directors and  
officers

*Explanation I*—The banker of a Company is not, as such, an officer within the meaning of this section.

*Explanation II*—Proceedings cannot be taken under this section against the representatives of a deceased officer

215. If any director, officer or contributory of any Company wound up under this Act destroys, mutilates, alters, falsifies or fraudulently secretes any books, papers, writings or securities, or makes, or is privy to the making of, any false or fraudulent entry in any register, book of account, or other document belonging to the Company, with intent to defraud or deceive any person, every person so offending shall be punished with imprisonment for a term which may extend to two years, and shall also be liable to fine which may extend to five hundred rupees.

Penalty on  
falsification  
of books

216. Where any order is made for winding-up a Company by the Court or subject to the supervision of the Court, if it appear in the course of such winding-up that any past or present director, manager, officer or member of such Company has been guilty of any offence in relation to the Company for which he is criminally responsible, the Court may, on the application of any person interested in such winding-up, or of its own motion, direct the official liquidators or the liquidators (as the case may be) to institute a prosecution for such offence, and may order the costs and expenses of such prosecution to be paid out of the assets of the Company.

Prosecution  
of delinquent  
directors in  
case of  
winding-up  
by Court.

(Part IV.—*Winding-up of Companies and Associations under this Act.*  
*Secs 217-219. Part V.—Registration-office Sec 220*)

Penalty for  
false evi-  
dence

<sup>1</sup>217. If any person upon any examination upon oath authorized under this Act, or in any affidavit, deposition, or solemn affirmation, in or about the winding-up of any Company under this Act, or otherwise in or about any matter arising under this Act, intentionally gives false evidence, he shall be liable to imprisonment for a term which may extend to seven years and shall also be liable to fine.

Winding-up  
may be  
referred to  
District  
Court.

<sup>2</sup>218. Where the High Court makes an order for winding-up a Company under this Act, it may, if it thinks fit, direct all subsequent proceedings to be had in a District Court; and thereupon such District Court shall, for the purpose of winding-up the Company, be deemed to be "the Court" within the meaning of this Act, and shall have, for the purposes of such winding-up, all the jurisdiction and powers of the High Court.

Transfer of  
winding-up  
from one  
District  
Court to  
another

<sup>3</sup>219. If during the progress of a winding-up in a District Court it is made to appear to the High Court that the same could be more conveniently prosecuted in any other District Court, the High Court may transfer the same to such other Court, and thereupon the winding-up shall proceed in such other District Court.

## PART V.

### REGISTRATION-OFFICE.

Constitution  
of registra-  
tion office.

220. The Registration of Companies under this Act shall be conducted as follows (that is to say) :—

- (a) The Local Government may, after the sanction of the Governor General in Council to the creation of any such offices shall have been obtained, from time to time appoint<sup>4</sup> such Registrars, Assistant Registrars, clerks and servants as it may think necessary for the Registration of Companies under this Act, and remove them at pleasure.

<sup>1, 2, 3</sup> Cf s 193 of the Indian Penal Code (Act XLV of 1860) and ss 41 and 42 of the Companies Act, 1867 (30 & 31 Vict, c 131), respectively

<sup>4</sup> For appointments made under the power conferred by this section in—

(1) Assam, *see* Assam List of Local Rules and Orders, Ed 1893, p 181

(2) North-Western Provinces and Oudh, *see* North-Western Provinces and Oudh List of Local Rules and Orders, p 92

(3) Burma, *see* Burma Rules Manual, Ed 1897, p 90

In the case of Burma, the notification issued under s 190 (1) of Act X of 1866, corresponding to cl. (a) of this section in the present Act

## (Part V.—Registration-office. Sec. 220.)

- (b) The Local Government may make such regulations<sup>1</sup> as it thinks fit with respect to the duties to be performed by any such Registrars, Assistant Registrars, clerks and servants as aforesaid :
- (c) The Local Government may from time to time determine the places<sup>2</sup> at which offices for the registration of Companies are to be established, so that there be at all times maintained in each of the towns of Calcutta, Madras and Bombay at least one such office, and that no Company shall be registered except at an office within that part of British India in which, by the memorandum of association, the registered office of the Company is declared to be established :
- (d) The Local Government may from time to time direct a seal or seals to be prepared for the authentication of any documents required for or connected with the registration of Companies .
- (e) Every person may inspect the documents kept by the Registrar of Joint-Stock Companies . There shall be paid for such inspection such fees as may be directed by the Local Government, not exceeding one rupee for each inspection. Any person may require a certificate of the incorporation of any Company, or a copy or extract of any other document or any part of any other document, to be certified by the Registrar . There shall be paid for such certificate of incorporation, certified copy or extract, such fees as the Local Government may direct,<sup>3</sup> not exceeding three rupees for the certificate of incorporation, and not exceeding two annas for each hundred words of such copy or extract :
- (f) The existing Registrar, Assistant Registrars, clerks and other officers and servants in the office for the registration of Joint-Stock Companies shall, during the pleasure of the Local Government,

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<sup>1</sup> For instance of such regulations in—

- (1) Bombay . . . see Bombay List of Local Rules and Orders, Ed 1896, Vol I, p 270 ;
- (2) Madras . . . see Madras List of Local Rules and Orders, Ed 1898, Vol I, p 164 ;
- (3) Assam . . . see Assam List of Local Rules and Orders, Ed 1893, p 181 ;
- (4) Burma . . . see Burma Rules Manual, Ed 1897, p 90 ;
- (5) Central Provinces see Central Provinces List of Local Rules and Orders, Ed 1896, p 146

In the case of Burma and the Central Provinces, the notifications were issued under s. 190 (2) of Act X of 1866, corresponding to cl (b) of this section in the present Act

<sup>2</sup> For instance of notification issued under this clause and clause (a), see North-Western Provinces and Oudh List of Local Rules and Orders, Ed 1894, p 92

<sup>3</sup> For notification declaring in the case of Burma that the fees to be levied under this clause shall be the maximum fees allowed by this section, see Burma Rules Manual, Ed 1897, p 94 . The notification issued under s. 190 (5) of Act X of 1866, corresponding to cl. (e) of s 220 in the present Act.

(Part VI.—*Application of Act to Companies registered under the Joint-Stock Companies Acts. Sec. 221*)

hold the offices and receive the salaries hitherto held and received by them; but they shall, in the execution of their duties, conform to any regulations that may be issued by the Local Government:

- (g) There shall be paid to any Registrar, Assistant Registrar, clerk or servant that may hereafter be employed in the registration of Joint-Stock Companies such salaries as the Local Government may, with the sanction of the Governor General in Council, direct:
- (h) Whenever any act is herein directed to be done to or by the Registrar of Joint-Stock Companies, such act shall, until the Local Government otherwise directs, be done to or by the existing Registrar of Joint-Stock Companies, or in his absence to or by such person as the Local Government may for the time being authorize. But, in the event of the Local Government altering the constitution of the existing registry-office, such act shall be done to or by such officer or officers, and at such place or places with reference to the local situation of the registered offices of the Companies to be registered, as the Local Government may appoint.

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PART VI.

APPLICATION OF ACT TO COMPANIES REGISTERED UNDER THE JOINT-STOCK COMPANIES ACTS

Application  
of Act to  
Companies  
formed under  
Act XIX of  
1857 or VII  
of 1860

221. Subject as hereinafter mentioned, this Act, with the exception of Table A in the first schedule, shall apply to Companies formed and registered under Act No XIX of 1857<sup>1</sup> and Act No VII of 1860<sup>1</sup> or either of them, in the same manner, in the case of a limited Company, as if such Company had been formed and registered under this Act as a Company limited by shares, and, in the case of a Company other than a limited Company, as if such Company had been formed and registered as an unlimited Company under this Act, with this qualification that, wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such Companies were respectively registered under the said Acts or either of them, and the power of altering

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<sup>1</sup> Act XIX of 1857 and Act VII of 1860 were repealed by Act X of 1866, s 219 Table B in the Schedule to Act XIX of 1857, however, remains in force (*see* s 2, *supra*), and is printed, *infra*, as an Appendix to this Act

(Part VI.—Application of Act to Companies registered under the Joint-Stock Companies Acts. Secs. 222-223. Part VII.—Companies authorised to register under this Act Secs 224-225.)

regulations by special resolution given by this Act shall, in the case of any Company formed and registered under the said Acts or either of them, extend to altering any provisions contained in the table marked B annexed to Act No. XIX of 1857,<sup>1</sup> and shall also, in the case of an unlimited Company formed and registered as last aforesaid, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that such regulations are contained in the memorandum of association

222. This Act shall apply to Companies registered but not formed under the said Acts or either of them, in the same manner as it is hereinafter declared to apply to Companies registered but not formed under this Act; with this qualification, that, wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such Companies were respectively registered under the said Acts or either of them.

Application of Act to Companies registered under Act XIX of 1857 or VII of 1860

223. Any Company registered under the said Acts or either of them may cause its shares to be transferred in manner hitherto in use, or in such other manner as the Company may direct.

Mode of transferring shares

## PART VII.

### COMPANIES AUTHORIZED TO REGISTER UNDER THIS ACT.

224 With the exceptions made in the next following section, and subject to the regulations therein contained, every Company, existing at the time of the commencement of this Act, including any Company registered under either of the said Acts, consisting of seven or more members, and any Company hereafter formed in pursuance of any Act of Parliament or Act of the Governor General in Council other than this Act, or of Letters Patent, or being otherwise duly constituted by law, and consisting of seven or more members, may at any time hereafter register itself under this Act as an unlimited Company, or a Company limited by shares, or a Company limited by guarantee, and no such registration shall be invalid by reason that it has taken place with a view to the Company being wound up.

Companies capable of being registered

225 The following regulations shall be observed with respect to the registration of Companies under this Part of this Act (that is to say):—

Regulations as to registration of existing Companies.

(a) No Company having the liability of its members limited by Act of Parliament or Act of the Governor General in Council other

<sup>1</sup> Printed *infra* as an Appendix to this Act

(Part VII—Companies authorised to register under this Act. Sec. 225.)

than this Act, or by Letters Patent, and not being a Joint-Stock Company as hereinafter defined, shall register under this Act in pursuance of this Part thereof :

- (b) No Company having the liability of its members limited by Act of Parliament or Act of the Governor General in Council other than this Act, or by Letters Patent, shall register under this Act in pursuance of this Part thereof as an unlimited Company, or as a Company limited by guarantee :
- (c) No life-assurance Company existing at the time of the commencement of this Act, and no Company that is not a Joint-Stock Company as hereinafter defined, shall in pursuance of this Part of this Act register under this Act as a Company limited by shares :
- (d) No Company shall register under this Act in pursuance of this Part thereof unless an assent to its so registering is given by a majority of such of its members as may be present personally, or by a proxy in cases where proxies are allowed by the regulations of the Company, at some general meeting summoned for the purpose .
- (e) Where a Company, not having the liability of members limited by Act of Parliament, or Act of the Governor General in Council, or by Letters Patent, is about to register as a limited Company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present personally or by proxy, at such last-mentioned general meeting .
- (f) Where a Company is about to register as a Company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the Company, in the event of the same being wound up during the time that he is a member or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceased to be a member, and of the costs, charges and expenses of winding-up the Company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding a specified amount.

In computing any majority under this section, when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the Company of which he is a member.

(Part VII—Companies authorised to register under this Act Secs.  
226-228.)

226. For the purposes of this Part of this Act, so far as the same relates to the description of Companies empowered to register as Companies limited by shares, a Joint-Stock Company shall be deemed to be a Company having a permanent paid-up or nominal capital of fixed amount, divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of shares in such capital, or the holders of such stock, and no other persons, and such Company, when registered with limited liability under this Act, shall be deemed to be a Company limited by shares.

Definition of  
"Joint-Stock  
Company."

227. Previously to the registration, in pursuance of this Part of this Act, of any Joint-Stock Company, there shall be delivered to the Registrar the following documents (that is to say) :—

Requisitions  
for registra-  
tion by  
Companies.

(a) A list showing the names, addresses and occupations of all persons who, on a day named in such list and not being more than six clear days before the day of registration, were members of such Company, with the addition of the shares held by such persons respectively, distinguishing, in cases where such shares are numbered, each share by its number :

(b) A copy of any Act of Parliament or Act of the Governor General in Council, Royal Charter, Letters Patent, deed of settlement, contract of co-partnery or other instrument constituting or regulating the Company :

(c) If any such Joint-Stock Company is intended to be registered as a limited Company, the above list and copy shall be accompanied by a statement specifying the following particulars (that is to say) :—

the nominal capital of the Company and the number of shares into which it is divided ;

the number of shares taken and the amount paid on each share ;

the name of the Company, with the addition of the word "limited" as the last word thereof :

with the addition, in the case of a Company intended to be registered as a Company limited by guarantee, of the resolution declaring the amount of the guarantee.

228. Previously to the registration in pursuance of this Part of this Act of any Company not being a Joint-Stock Company, there shall be delivered to the Registrar a list showing the names, addresses and occupations

Requisitions  
for registra-  
tion by exist-  
ing Company

(Part VII—Companies authorised to register under this Act. Sec.  
229-232.)

not being a  
Joint-Stock  
Company.

of the directors or other managers (if any) of the Company, also a copy of any Act of Parliament, Act of the Governor General in Council, Letters Patent, deed of settlement, contract of co-partnery or other instrument constituting or regulating the Company, with the addition, in the case of a Company intended to be registered as a Company limited by guarantee, of the resolution declaring the amount of the guarantee

Power for  
existing  
Company to  
register  
amount of  
stock instead  
of shares

**229.** Where a Joint-Stock Company authorized to register under this Act has had the whole or any portion of its capital converted into stock, such Company shall, as to the capital so converted, instead of delivering to the Registrar a statement of shares, deliver to the Registrar a statement of the amount of stock belonging to the Company, and the names of the persons who were holders of such stock, on some day to be named in the statement, not more than six clear days before the day of registration

Authentica-  
tion of state-  
ments of  
existing  
Companies.

**230.** The lists of members and directors and any other particulars relating to the Company hereby required to be delivered to the Registrar shall be verified by declaration of the directors of the Company delivering the same, or any two of them, or of any two other principal officers of the Company, made before a Justice of the Peace or a District Judge

Registrar  
may require  
evidence as  
to nature of  
Company

**231.** The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether an existing Company is or not a Joint-Stock Company as hereinbefore defined

On registra-  
tion of bank-  
ing Company  
with limited  
liability,  
notice to be  
given to  
customers

**232.** Every banking Company existing at the date of the passing of this Act which registers itself as a limited Company shall, at least thirty days previous to obtaining a certificate of registration with limited liability, give notice that it is intended so to register the same to every person and partnership firm having a banking account with the Company

Such notice shall be given either by delivering the same to such person or firm, or leaving the same, or putting the same into the post addressed to him or them, at such address as shall have been last communicated or otherwise become known as his or their address to or by the Company

In case the Company omits to give any such notice as is hereinbefore required to be given, then, as between the Company and the person or persons only who are for the time being interested in the account in respect of which such notice ought to have been given, and so far as respects such account and all variations thereof down to the time at which such notice shall be given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

(Part VII—Companies authorised to register under this Act Secs.  
233-239)

**233.** No fees shall be charged in respect of the registration in pursuance of this Part of this Act of any Company in cases where such Company is not registered as a limited Company, or where, previously to its being registered as a limited Company, the liability of the shareholders was limited by some Act of Parliament, or Act of the Governor General in Council, or by Letters Patent.

Exemption of certain Companies from payment of fees

**234.** Any Company authorized by this Part of this Act to register with limited liability shall, for the purpose of obtaining registration with limited liability, change its name by adding thereto the word "limited"

Company to change name.

**235.** Upon compliance with the requisitions in this Part of this Act contained with respect to registration, and on payment of such fees, if any, as are payable under the tables marked B and C in the first schedule hereto, the Registrar shall certify under his hand that the Company so applying for registration is incorporated as a Company under this Act, and in the case of a limited Company that it is limited, and thereupon such Company shall be incorporated, and shall have perpetual succession and a common seal.

Certificate of registration of existing Companies.

**236.** A certificate of incorporation given at any time to any Company registered in pursuance of this Part of this Act shall be conclusive evidence that all the requisitions herein contained in respect of registration under this Act have been complied with, and that the Company is authorized to be registered under this Act as a limited or unlimited Company, as the case may be; and the date of incorporation mentioned in such certificate shall be deemed to be the date at which the Company is incorporated under this Act

Certificate to be evidence of compliance with Act.

**237.** All such property, moveable and immoveable, including all interests and rights in, to and out of property, moveable and immoveable, and including obligations and actionable claims, as may belong to or be vested in the Company at the date of its registration under this Act, shall, on registration, pass to and vest in the Company as incorporated under this Act for all the estate and interest of the Company therein.

Transfer of property to Company.

**238.** The registration in pursuance of this Part of this Act of any Company shall not affect or prejudice the liability of such Company to have enforced against it, or its right to enforce, any debt or obligation incurred, or any contract entered into, by, to, with or on behalf of, such Company previously to such registration

Registration under this Act not to affect obligations incurred previously to registration  
Continuation of existing suits

**239.** All such suits and other legal proceedings as may at the time of the registration of any Company registered in pursuance of this Part of

(Part VII.—Companies authorised to register under this Act. Sec. 240.)

this Act have been commenced by or against such Company or the public officer or any member thereof may be continued in the same manner as if such registration had not taken place. Nevertheless, execution shall not issue against the effects of any individual member of such Company upon any decree or order obtained in any suit or proceeding so commenced as aforesaid; but, in the event of the property and effects of the Company being insufficient to satisfy such decree or order, an order may be obtained for winding-up the Company.

Effect of  
registration  
under Act

240. When a Company is registered under this Act in pursuance of this Part thereof, all provisions contained in any Act of Parliament, Act of the Governor General in Council, deed of settlement, contract of copartnery, Letters Patent or other instrument constituting or regulating the Company, including, in the case of a Company registered as a Company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the Company, in the same manner and with the same incidents as if they were contained in a registered memorandum of association and articles of association, and all the provisions of this Act shall apply to such Company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject to the provisions following (that is to say) :—

- (a) That table A in the first schedule to this Act shall not, unless adopted by special resolution, apply to any Company registered under this Act in pursuance of this Part thereof.
- (b) That the provisions of this Act relating to the numbering of shares shall not apply to any Joint-Stock Company whose shares are not numbered :
- (c) That no Company shall have power to alter any provisions contained in any Act of Parliament, Act of the Legislative Council or Act of the Governor General in Council relating to the Company :
- (d) That no Company shall have power, without the sanction of the Governor General in Council, to alter any provision contained in any Letters Patent relating to the Company :
- (e) In the event of the Company being wound up, every person shall be a contributory in respect of the debts and liabilities of the Company contracted prior to registration, who is liable to pay or contribute to the payment of any debt or liability of the Company contracted prior to registration, or to pay or contribute to

(Part VII—Companies authorised to register under this Act. Secs.

241-242)

the payment of any sum for the adjustment of the rights of the members amongst themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs, charges and expenses of winding-up the Company, so far as relates to such debts or liabilities as aforesaid. Every such contributory shall be liable to contribute to the assets of the Company, in the course of the winding-up, all sums due from him in respect of any such liability as aforesaid. In the event of the death or insolvency of any such contributory as last aforesaid, the provisions hereinbefore contained with respect to the representatives, heirs and devisees of deceased contributories, and with reference to the assignees of insolvent contributories, shall apply :

- (f) Nothing herein contained shall authorize any Company to alter any such provisions contained in any deed of settlement, contract of co-partnery, Letters Patent or other instrument constituting or regulating the Company, as would, if such Company had originally been formed under this Act, have been contained in the memorandum of association, and are not authorized to be altered by this Act :

But nothing herein contained shall derogate from any power of altering its constitution or regulations which may be vested in any Company, registering under this Act in pursuance of this Part thereof by virtue of any Act of Parliament, Act of the Governor General in Council, deed of settlement, contract of co-partnery, Letters Patent or other instrument constituting or regulating the Company

241. The Court may, at any time after the presentation of a petition for winding-up a Company registered in pursuance of this Part of this Act, and before making an order for winding-up the Company, upon the application of any creditor of the Company, restrain further proceedings in any suit or legal proceeding against any contributory of the Company, as well as against the Company as hereinbefore provided, upon such terms as the Court thinks fit.

Power of  
Court to  
restrain fur-  
ther proceed-  
ings

242. Where an order ~~has~~ been made for winding-up a Company registered in pursuance of this Part of this Act, in addition to the provisions hereinbefore contained, it is hereby further provided that no suit or other legal proceeding shall be commenced or proceeded with against any contributory of the Company in respect of any debt of the Company, except with the leave of the Court and subject to such terms as the Court may impose.

Order for  
winding-up  
Company.

(Part VIII—Application of Act to unregistered Companies. Sec. 243)

## PART VIII.

### APPLICATION OF ACT TO UNREGISTERED COMPANIES.

Winding-up  
unregistered  
Companies

**243.** Subject as hereinafter mentioned, any Partnership, Association or Company, except Railway Companies incorporated by Act of Parliament or Act of the Governor General in Council, consisting of more than seven members and not registered under this Act, and hereinafter included under the term “unregistered Company,” may be wound up under this Act, and all the provisions of this Act with respect to winding-up shall apply to such Company, with the following exceptions and additions.—

(1) An unregistered Company shall, for the purpose of determining the Court having jurisdiction in the matter of the winding-up, be deemed to be registered in that part of British India where its principal place of business is situate, or, if it has a principal place of business situate in more than one part of British India, then in each part of British India where it has a principal place of business. Moreover, the principal place of business of an unregistered Company, or (where it has a principal place of business situate in more than one part of British India) such one of its principal places of business as is situate in that part of British India in which proceedings are being instituted, shall, for all the purposes of the winding-up of such Company, be deemed to be the registered office of the Company:

(2) No unregistered Company shall be wound up under this Act voluntarily, or subject to the supervision of the Court

(3) The circumstances under which an unregistered Company may be wound up are as follows (that is to say) :—

(a) whenever the Company is dissolved or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;

(b) whenever the Company is unable to pay its debts;

(c) whenever the Court is of opinion that it is just and equitable that the Company should be wound up:

(4) An unregistered Company shall, for the purposes of this Act, be deemed to be unable to pay its debts—

(a) whenever a creditor to whom the Company is indebted, by assignment or otherwise, in a sum exceeding five hundred rupees then due, has served on the Company, by leaving the same at the principal place of business of the Company or by delivering to the secretary or some director or principal officer of the Com-

pany, or by otherwise serving the same in such manner as the Court may approve or direct, a demand under his hand requiring the Company to pay the sum so due, and the Company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor

- (b) whenever any suit or other proceeding has been instituted against any member of the Company for any debt or demand due or claimed to be due from the Company, or from him in his character of member of the Company, and notice in writing of the institution of such suit or other legal proceeding having been served upon the Company by leaving the same at the principal place of business of the Company, or by delivering it to the secretary or some director, manager or principal officer of the Company, or by otherwise serving the same in such manner as the Court may approve or direct, the Company has not, within ten days after service of such notice, paid, secured or compounded for such debt or demand, or procured such suit or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against such suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same :
- (c) whenever execution or other process issued on a decree or order obtained in any Court in favour of any creditor in any proceeding instituted by such creditor against the Company, or any member thereof as such or against any person authorized to be sued as nominal defendant on behalf of the Company, is returned unsatisfied :
- (d) whenever it is otherwise proved to the satisfaction of the Court that the Company is unable to pay its debts.

**244.** In the event of an unregistered Company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the Company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves, or to pay or contribute to the payment of the costs, charges and expenses of winding-up the Company.

Who to be deemed a contributory in the event of Company being wound up.

Every such contributory shall be liable to contribute to the assets of the Company in the course of the winding-up all sums due from him in respect of any such liability as aforesaid.

(Part VIII.—Application of Act to unregistered Companies Secs  
245-248)

In the event of the death or insolvency of any contributory, the provisions hereinbefore contained with respect to the personal representatives, heirs and devisees of a deceased contributory, and to the assignees of an insolvent contributory, shall apply.

Power of  
Court to re-  
strain further  
proceedings.

245. The Court may, at any time after the making of an application for winding-up an unregistered Company, and before making an order for winding-up the Company, upon the application of any creditor of the Company, restrain further proceedings in any suit or proceeding against any contributory of the Company, or against the Company as hereinbefore provided, upon such terms as the Court thinks fit.

Effect of  
order for  
winding-up  
Company.

246. Where an order has been made for winding-up an unregistered Company, in addition to the provisions hereinbefore contained in the case of Companies formed under this Act, it is hereby further provided that no suit shall be commenced or proceeded with against any contributory of the Company in respect of any debt of the Company, except with the leave of the Court and subject to such terms as the Court may impose.

Provision in  
case of  
unregistered  
Company.

247. If any unregistered Company has no power to sue and be sued in a common name, or if, for any reason, it appears expedient, the Court may, by the order made for winding-up such Company or by any subsequent order, direct that all such property, moveable and immoveable, including all interests, claims and rights in, to and out of property, moveable and immoveable, and including actionable claims, as may belong to or be vested in the Company, or to or in any person or persons on trust for or on behalf of the Company, or any part of such property, is to vest in the official liquidator or official liquidators by his or their official name or names; and thereupon the same or such part thereof as may be specified in the order shall vest accordingly, and the official liquidator or official liquidators may, in his or their official name or names, or in such name or names, and after giving such indemnity, as the Court directs, bring or defend any suits or other legal proceedings relating to any property vested in him or them, or any suits or other legal proceedings necessary to be brought or defended for the purposes of effectually winding-up the Company and recovering the property thereof.

Provisions of  
this Part of  
Act cumulative

248. The provisions made by this Part of this Act with respect to unregistered Companies shall be deemed to be made in addition to, and not in restriction of, any provisions hereinbefore contained with respect to winding-up Companies by the Court.

The Court or official liquidator may, in addition to anything contained in this Part of this Act, exercise any powers or do any act in the case of

*(Part IX.—Miscellaneous Provisions. Secs 249-252.)*

unregistered Companies which might be exercised or done by it or him in winding-up Companies formed under this Act, but an unregistered Company shall not, except in the event of its being wound up, be deemed to be a Company under this Act, and then only to the extent provided by this Part of this Act.

## PART IX.

## MISCELLANEOUS PROVISIONS

249. No Company under this Act shall have power to buy its own shares. Company not to buy its own shares.

250. Where, previously to the commencement of this Act, an order has been made for winding-up a Company under the Indian Companies Act, 1866<sup>1</sup>, or a resolution has been passed for winding-up a Company voluntarily, such Company shall be wound up in the same manner and with the same incidents as if this Act were not passed, and, for the purpose of such winding-up, the Indian Companies Act, 1866<sup>1</sup>, shall be deemed to remain in full force. Saving of existing proceedings for winding-up.

251. Where, previously to the commencement of this Act, any conveyance, mortgage-deed or other instrument has been made in pursuance of the Indian Companies Act, 1866<sup>1</sup>, such instrument shall be of the same force as if this Act had not passed; and, for the purposes of such instrument, the Indian Companies Act, 1866<sup>1</sup>, shall be deemed to remain in full force. Saving of conveyances.

252. All offences under this Act may be tried by any Magistrate of the first class, unless the period of imprisonment to which the offender is liable exceeds that which such officer is competent to award under the law for the time being in force<sup>2</sup> in the place in which he is employed. When the period of imprisonment provided by this Act exceeds the period that may be awarded by such officer, the offender shall be committed for trial before the Court of Session. Cognizance of offences

If any offence which by this Act is declared to be punishable by any penalty is committed by any person within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William, Madras and Bombay, such offence shall be punishable upon summary conviction by any Presidency Magistrate of the place at which such Court is held. Punishment of offences committed within Presidency-towns

<sup>1</sup> Act X of 1866 was repealed by s 2 of this Act

<sup>2</sup> The law now in force is contained in s 32 of the Code of Criminal Procedure, 1898 (V of 1898).

(Part IX.—Miscellaneous Provisions. Secs 253-256. First Schedule—  
Table A: Regulations for Management of a Company limited by  
Shares.)

Power to  
make orders  
as to costs

<sup>1</sup> 253. Subject to the provisions hereinbefore contained, the Court may, in any proceedings under this Act, make such order as to costs as it thinks fit.

Power of  
High Court  
to make  
rules

<sup>1</sup> 254. The High Court may from time to time make rules, consistent with this Act and with the Code of Civil Procedure<sup>2</sup>, concerning the mode of proceedings to be had for winding-up a Company in such Court and in the Courts subordinate thereto, and for giving effect to the provisions hereinbefore contained as to the reduction of the capital and the sub-division of the shares of a Company. XIV of 1882.

Construction  
of "Regis-  
trar of Joint-  
Stock Com-  
panies" in  
Act XXI of  
1860.

255. In sections 1 and 18 of Act No XXI of 1860<sup>3</sup> (*for the registration of Literary, Scientific and Charitable Societies*), the words "Registrar of Joint-Stock Companies" shall be construed to mean Registrar of Joint-Stock Companies under this Act or any Act for the time being in force

Act not to  
apply to  
Bank of Ben-  
gal, Madras  
or Bombay.

256. Save as provided in sections 152 and 153, nothing in this Act shall be deemed to apply to the Bank of Bengal, the Bank of Madras and the Bank of Bombay.

## FIRST SCHEDULE.

### TABLE A.

#### REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES *Shares.*

(1) If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

(2) Every member shall, on payment of eight annas or such less sum as the Company in general meeting may prescribe, be entitled to a certificate under the common seal of the Company, specifying the share or shares held by him, and the amount paid up thereon.

(3) If such certificate is worn out or lost, it may be renewed, on payment of eight annas or such less sum as the Company in general meeting may prescribe.

<sup>1</sup> Cf ss 45 and 20 respectively of the Companies Act, 1867 (30 & 31 Vict, c 131)

<sup>2</sup> This reference should now be read as applying to Act XIV of 1882, see s 3 of that Act Printed, *infra*, p 262

<sup>3</sup> Printed, General Acts, Vol I, Ed 1898, p. 213

(First Schedule.—Table A : Regulations for Management of a Company limited by Shares.)

*Calls on Shares.*

(4) The directors may from time to time make such calls upon the members in respect of all moneys unpaid on their shares as they think fit, provided that twenty-one days' notice at least is given of each call; and each member shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the directors.

(5) A call shall be deemed to have been made at the time when the resolution of the directors authorising such call was passed

(6) If the call payable in respect of any share is not paid before or on the day appointed for payment thereof, the holder for the time being of such share shall be liable to pay interest for the same at the rate of five per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.

(7) The directors may, if they think fit, receive, from any member willing to advance the same, all or any part of the moneys due upon the shares held by him beyond the sums actually called for; and, upon the moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the Company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

*Transfers of Shares.*

(8) The instrument of transfer of any share in the Company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register book in respect thereof.

(9) Shares in the Company shall be transferred in the following form:—

I, *A B*, of \_\_\_\_\_ in consideration of the sum of rupees \_\_\_\_\_ paid to me by *C D* of \_\_\_\_\_, do hereby transfer to the said *C D* the share (or shares) numbered \_\_\_\_\_ standing in my name in the books of the \_\_\_\_\_ Company, to hold unto the said *C D*, his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of the execution hereof; and I, the said *C D*, do hereby agree to take the said share (or shares) subject to the same conditions. As witness our hands the \_\_\_\_\_ day of \_\_\_\_\_

(10) The Company may decline to register any transfer of shares made by a member who is indebted to them.

(*First Schedule.—Table A. Regulations for Management of a Company limited by Shares*)

(11) The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year

*Transmission of Shares.*

(12) The executors or administrators of a deceased member shall be the only persons recognised by the Company as having any title to his share

(13) Any person becoming entitled to a share in consequence of the death, bankruptcy or insolvency of any member, or in consequence of the marriage of any female member, may be registered as a member upon such evidence being produced as may, from time to time, be required by the Company.

(14) Any person who has become entitled to a share in consequence of the death, bankruptcy or insolvency of any member, or in consequence of the marriage of any female member, may, instead of being registered himself, elect to have some person to be named by him registered as a transferee of such share.

(15) The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such share

(16) The instrument of transfer shall be presented to the Company, together with such evidence as the directors may require to prove the title of the transferee, and thereupon the Company shall register the transferee as a member.

*Forfeiture of Shares.*

(17) If any member fails to pay any call on the day appointed for payment thereof, the directors may, at any time thereafter, during such time as the call remains unpaid, serve a notice on him requiring him to pay such call together with interest and any expenses that may have accrued by reason of such non-payment.

(18) The notice shall name a further day on or before which such call and all interest and expenses that have accrued by reason of such non-payment are to be paid. It shall also name the place where payment is to be made, the place so named being either the registered office of the Company or some other place at which calls of the Company are usually made payable. The notice shall also state that, in the event of non-payment at or before the time and at the place appointed, the shares in respect of which such call was made will be liable to be forfeited

(19) If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may

(First Schedule.—Table A: Regulations for Management of a Company Limited by Shares)

at any time thereafter, before payment of all calls, interest and expenses due in respect thereof has been made, be forfeited by a resolution of the directors to that effect.

(20) Any share so forfeited shall be deemed to be the property of the Company and may be disposed of in such manner as the Company in general meeting thinks fit.

(21) Any member whose shares have been forfeited shall notwithstanding be liable to pay to the Company all calls owing upon such shares at the time of the forfeiture.

(22) A solemn declaration in writing, made before a Magistrate, that the call in respect of a share was made and notice thereof given, and that default in payment of the call was made and that the forfeiture of the share was made by a resolution of the directors to that effect, shall be sufficient evidence of the facts therein stated as against all persons entitled to such share, and such declaration and the receipt of the Company for the price of such share shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to the purchaser, and thereupon he shall be deemed the holder of such share discharged from all calls due prior to such purchase, and he shall not be bound to see to the application of the purchase-money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

*Conversion of Shares into Stock*

(23) The directors may, with the sanction of the Company, previously given in general meeting, convert any paid up shares into stock

(24) When any shares have been converted into stock, the several holders of such stock may thenceforth transfer their respective interests therein, or any part of such interest, in the same manner and subject to the same regulations as and subject to which any shares in the capital of the Company may be transferred, or as near thereto as circumstances admit.

(25) The several holders of stock shall be entitled to participate in the dividends and profits of the Company according to the amount of their respective interests in such stock; and such interests shall, in proportion to the amount thereof, confer on the holders thereof, respectively, the same privileges and advantages for the purpose of voting at meetings of the Company and for other purposes as would have been conferred by shares of equal amount in the capital of the Company; but so that none of such privileges or advantages, except the participation in the dividends and

(First Schedule.—Table A: Regulations for Management of a Company limited by Shares.)

profits of the Company, shall be conferred by any such aliquot part of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages

*Increase in Capital*

(26) The directors may, with the sanction of a special resolution of the Company previously given in general meetings, increase its capital by the issue of new shares, such aggregate increase to be of such amount, and to be divided into shares of such respective amounts, as the Company in general meeting directs, or, if no direction is given, as the directors think expedient.

(27) Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice specifying the number of shares to which the member is entitled and limiting a time within which the offer, if not accepted, will be deemed to be declined; and after the expiration of such time, or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the Company.

(28) Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions, with reference to the payment of calls, and the forfeiture of shares on non-payment of calls, or otherwise, as if it had been part of the original capital.

*General Meetings.*

(29) The first general meeting shall be held at such time, not being more than six months after the registration of the Company, and at such place as the directors may determine.

(30) Subsequent general meetings shall be held, once at the least in every year, at such time and place as may be prescribed by the Company in general meeting; and, if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

(31) The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary

(First Schedule.—Table A Regulations for Management of a Company limited by Shares.)

(32) The directors may, whenever they think fit, and they shall, upon a requisition made in writing by not less than one-fifth in number of the members of the Company, convene an extraordinary general meeting.

(33) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.

(34) Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other members amounting to the required number, may themselves convene an extraordinary general meeting.

*Proceedings at General Meeting.*

(35) Seven days' notice at the least, specifying the place, the day and the hour of meeting, and, in case of special business, the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the Company in general meeting, but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

(36) All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, and the consideration of the accounts, balance-sheets and the ordinary report of the directors.

(37) No business shall be transacted at any general meeting except the declaration of a dividend, unless a quorum of members is present at the time when the meeting proceeds to business. Such quorum shall be ascertained as follows, that is to say:—If the persons who have taken shares in the Company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation that no quorum shall in any case exceed twenty.

(38) If, within one hour from the time appointed for the meeting, a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved. In any other case, it shall stand adjourned to the same day in the next week, at the same time and place, and if, at such adjourned meeting, a quorum is not present, it shall be adjourned *sine die*.

(First Schedule.—Table A *Regulations for Management of a Company limited by Shares*)

(39) The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the Company

(40) If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose some one of their number to be chairman.

(41) The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place

(42) At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution

(43) If a poll is demanded by five or more members, it shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the Company in general meeting. In the case of an equality of votes at any general meeting, the chairman shall be entitled to a second or casting vote.

*Votes of Members*

(44) Every member shall have one vote for every share up to ten. He shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first hundred shares.

(45) If any member is a lunatic or idiot, he may vote by his committee or other legal curator; and, if any member is a minor, he may vote by his guardian or any one of his guardians if more than one

(46) If one or more persons are jointly entitled to a share or shares, the member whose name stands first in the register of members as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same

(47) No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has acquired by transfer, at any meeting held after the expiration of three months from the registration of the Company, unless he has been possessed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote.

(First Schedule—Table A *Regulations for Management of a Company limited by Shares*)

(48) Votes may be given either personally or by proxy

(49) The instrument appointing a proxy shall be in writing, under the hand of the appointor, or, if such appointor is a corporation, under their common seal, and shall be attested by one or more witness or witnesses. No person shall be appointed a proxy who is not a member of the Company.

(50) The instrument appointing a proxy shall be deposited at the registered office of the Company not less than seventy-two hours before the time for holding the meeting at which the person named in such instrument proposes to vote, but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution

(51) Any instrument appointing a proxy shall be in the following form —

*Company, Limited*

I, \_\_\_\_\_, of \_\_\_\_\_, being  
a member of the \_\_\_\_\_ Company, Limited, and  
entitled to \_\_\_\_\_ vote or \_\_\_\_\_ votes, hereby appoint  
\_\_\_\_\_, of \_\_\_\_\_, as my proxy, to vote for me and  
on my behalf at the [ordinary or extraordinary, *as the case may be*] general  
meeting of the Company to be held on the \_\_\_\_\_ day of \_\_\_\_\_,  
and at any adjournment thereof (or at any meeting of the Company that  
may be held in the year \_\_\_\_\_).  
As witness my hand, this \_\_\_\_\_ day of \_\_\_\_\_  
Signed by the said \_\_\_\_\_ in the presence of \_\_\_\_\_

*Directors*

(52) The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association

(53) Until directors are appointed, the subscribers of the memorandum of association shall be deemed to be directors.

(54) The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the Company in general meeting

*Powers of Directors.*

(55) The business of the Company shall be managed by the director, who may pay all expenses incurred in getting up and registering the Company, and may exercise all such powers of the Company as are not by the foregoing Act, or by these articles, required to be exercised by the Company in general meeting, subject nevertheless to any regulations of these

(First Schedule—Table A *Regulations for Management of a Company limited by Shares*)

articles, to the provisions of the foregoing Act and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the Company in general meeting; but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

(56) The continuing directors may act notwithstanding any vacancy in their body.

*Disqualification of Directors.*

(57) The office of director shall be vacated—

if he, or any partner of his, or the firm of which he is a member, holds any other office or place of profit under the Company,

if he becomes bankrupt or insolvent;

if he is punished under any of the penal provisions of the foregoing Act;

if he is concerned in or participates in the profits of any contract with the Company.

But the above rules shall be subject to the following exceptions:—that no director shall vacate his office by reason of his being a member of any Company which has entered into contracts with, or done any work for, the Company of which he is director; nevertheless, he shall not vote in respect of such contract or work, and, if he does so vote, his vote shall not be counted.

*Rotation of Directors.*

(58) At the first ordinary meeting after the registration of the Company, the whole of the directors shall retire from office; and, at the first ordinary meeting in every subsequent year, one-third of the directors for the time being, or, if their number is not a multiple of three, then the number nearest to one-third, shall retire from office.

(59) The one-third or other nearest number to retire during the first and second years ensuing the first ordinary meeting of the Company shall, unless the directors agree among themselves, be determined by ballot. In every subsequent year, the one-third or other nearest number who have been longest in office shall retire.

(60) A retiring director shall be re-eligible.

*(First Schedule.—Table A : Regulations for Management of a Company limited by Shares )*

(61) The Company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

(62) If at any meeting at which an election of directors ought to take place, the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place; and if at such adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up.

(63) The Company may from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

(64) Any casual vacancy occurring in the board of directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

(65) The Company in general meeting may, by a special resolution, remove any director before the expiration of his period of office, and may, by an ordinary resolution appoint another person in his stead. The person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

#### *Proceedings of Directors*

(66) The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may at any time summon a meeting of the directors.

(67) The directors may elect a chairman of their meetings, and determine the period for which he is to hold office, but, if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

(68) The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any

(First Schedule.—Table A Regulations for Management of a Company limited by Shares.)

committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the directors.

(69) A committee may elect a chairman of its meetings. If no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting

(70) A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present; and, in case of an equality of votes, the chairman shall have a second or casting vote

(71) All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

*Dividends.*

(72) The directors may, with the sanction of the Company in general meeting, declare a dividend to be paid to the members in proportion to their shares.

(73) No dividend shall be payable except out of the profits arising from the business of the Company

(74) The directors may, before recommending any dividend, set aside out of the profits of the Company such sum as they think proper as a reserved fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the works connected with the business of the company as a reserved fund upon such securities as they may select

(75) The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the Company on account of calls or otherwise.

(76) Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned; and all dividends unclaimed for three years after having been declared may be forfeited by the directors for the benefit of the Company.

(77) No dividend shall bear interest as against the Company.

(*First Schedule.—Table A. Regulations for Management of a Company limited by Shares.*)

*Accounts.*

(78) The directors shall cause true accounts to be kept—

of the stock in trade of the Company;

of the sums of money received and expended by the Company, and the matters in respect of which such receipt and expenditure take place; and

of the credits and liabilities of the Company.

The books of accounts shall be kept at the registered office of the Company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the Company in general meeting, shall be open to the inspection of the members during the hours of business.

(79) Once at the least in every year the directors shall lay before the Company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.

(80) The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expenses of the establishment, salaries and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting, and, in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

(81) A balance-sheet shall be made out in every year and laid before the Company in general meeting, and such balance-sheet shall contain a summary of the property and liabilities of the Company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

(82) A printed copy of such balance-sheet shall, seven days previously to such meeting, be served on every member in the manner in which notices are hereinafter directed to be served.

(First Schedule.—Table A. Regulations for Management of a Company limited by Shares)

*Audit.*

(83) Once at the least in every year the accounts of the Company shall be examined, and the correctness of the balance-sheet ascertained by one or more auditor or auditors.

(84) The first auditors shall be appointed by the directors; subsequent auditors shall be appointed by the Company in general meeting.

(85) If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.

(86) The auditors may be members of the Company; but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the Company; and no director or other officer of the Company is eligible during his continuance in office.

(87) The election of auditors shall be made by the Company at their ordinary meeting in each year.

(88) The remuneration of the first auditors shall be fixed by the directors; that of subsequent auditors shall be fixed by the Company in general meeting.

(89) Any auditor shall be re-eligible on his quitting office.

(90) If any casual vacancy occurs in the office of any auditor appointed by the Company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

(91) If no election of auditors is made in manner aforesaid, the Local Government may, on the application of not less than five members of the Company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the Company for his services.

(92) Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

(93) Every auditor shall have a list delivered to him of all books kept by the Company, and shall at all reasonable times have access to the books and accounts of the Company. He may, at the expense of the Company, employ accountants or other persons to assist him in investigating such accounts, and he may, in relation to such accounts, examine the directors or any other officer of the Company.

(94) The auditors shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet, containing the particulars required by these regulations and properly drawn up

(First Schedule.—Table A : Regulations for Management of a Company limited by Shares)

so as to exhibit a true and correct view of the state of the Company's affairs, and, in case they have called for explanations or information from the directors, whether such explanations or information have or has been given by the directors, and whether they or it have or has been satisfactory. Such report shall be read, together with the report of the directors, at the ordinary meeting.

*Notices.*

(95) A notice may be served by the Company upon any member either personally or by sending it through the post in a letter addressed to such member at his registered place of abode.

(96) All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members ; and notice so given shall be sufficient notice to all the holders of such share.

(97) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post ; and, in proving such service, it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office.

## (First Schedule—Table A: Balance-sheet.)

Dr. Balance-sheet (a) of the			Company made up to			18	Cr.		
CAPITAL AND LIABILITIES				PROPERTY AND ASSETS.					
	Rs	As	II I, PROPERTY HELD BY THE COMPANY.		Rs	As.			
II DEBTS AND LIABILITIES OF THE COMPANY.	1	SHOWING— The number of shares . . . . .	IV DEBTS OWING TO THE COMPANY.	7	SHOWING— Immovable property—distinguishing— (a) Freehold land . . . . .				
	2	The amount paid per share . . . . .		(b) Buildings . . . . .					
	3	If any arrears of calls, the nature of the arrears and the names of the defaulters . . . . .		(c) Leasehold . . . . .					
	4	The particulars of any forfeited shares . . . . .		Movable property—distinguishing— (a) Stock-in-trade . . . . .					
	5	SHOWING— The amount of loans or mortgages or debenture bonds . . . . .	(b) Plant . . . . .						
	6	The amount of debts owing by the Company—distinguishing— (a) Debts for which acceptances have been given . . . . .	The cost to be stated with deductions for depreciation in value as charged to the reserve fund or profit and loss . . . . .						
VI. RESERVE FUND.			9			SHOWING— Debts considered good for which the Company holds no security . . . . .			
			10			Debts considered good for which the Company holds no security . . . . .			
			11	Debts considered doubtful and bad . . . . .					
				Any debt due from a director or other officer of the Company to be separately stated.					
VII PROFIT AND LOSS			12	SHOWING— The nature of investment and rate of interest . . . . .					
			13	The amount of cash, where lodged, and if bearing interest . . . . .					
CONTINGENT LIABILITIES.									

(u) See Clauses 61 and 82 of the foregoing Table A

(a) See clauses 81 and 82 of the foregoing Table A

(First Schedule.—Tables B and C : Fees.)

TABLE B.

TABLE OF FEES TO BE PAID TO THE REGISTRAR OF JOINT-STOCK COMPANIES  
BY A COMPANY HAVING A CAPITAL DIVIDED INTO SHARES.—

	Rs.	A	P.
For registration of a Company whose nominal capital does not exceed Rs. 20,000, a fee of . . . . .	40	0	0
For registration of a Company whose nominal capital exceeds Rs. 20,000 the above fee of forty rupees, with the following additional fees regulated according to the amount of nominal capital (that is to say)—			
For every 10,000 rupees of nominal capital, or part of 10,000 rupees, after the first 20,000 rupees up to 50,000 rupees . . .	20	0	0
For every 10,000 rupees of nominal capital, or part of 10,000 rupees, after the first 50,000 rupees up to 1,00,000 rupees . .	5	0	0
For every 10,000 rupees of nominal capital, or part of 10,000 rupees, after the first 1,00,000 rupees . . . . .	1	0	0
For registration of any increase of capital made after the first registration of the Company, the same fees per 10,000 rupees, or part of 10,000 rupees, as would have been payable if such increased capital had formed part of the original capital at the time of registration .			
Provided that no Company shall be liable to pay in respect of nominal capital on registration, or afterwards, any greater amount of fees than 1,000 rupees, taking into account, in the case of fees payable on an increase of capital after registration, the fees paid on registration			
For registration of any existing Company, except such Companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee is charged for registering a new Company			
For registering any document hereby required or authorised to be registered, other than the memorandum of association . . . . .	5	0	0
For making a record of any fact hereby authorized or required to be recorded by the Registrar of Companies, a fee of . . . . .	5	0	0

TABLE C.

TABLE OF FEES TO BE PAID TO THE REGISTRAR OF JOINT-STOCK COMPANIES  
BY A COMPANY NOT HAVING A CAPITAL DIVIDED INTO SHARES :—

	Rs.	A.	P.
For registration of a Company whose number of members, as stated in the articles of association, does not exceed 20 . . . . .	40	0	0
For registration of a Company whose number of members, as stated in the articles of association, exceeds 20, but does not exceed 100	100	0	0

(First Schedule.—Table C. Fees. Form D: Form of Statement referred to in Part III of the Act)

	Rs	A.	P.
For registration of a Company whose number of members, as stated in the articles of association, exceeds 100, but is not stated to be unlimited, the above fee of Rs. 100 with an additional Rs 5 for every 50 members, or less number than 50 members after the first 100.			
For registration of a Company in which the number of members is stated in the articles of association to be unlimited, a fee of	400	0	0
For registration of any increase on the number of members made after the registration of the Company, in respect of every 50 members or less than 50 members, of such increase . . . . .	5	0	0
Provided that no one Company shall be liable to pay on the whole a greater fee than Rs 400 in respect of its number of members, taking into account the fee paid on the first registration of the Company.			
For registration of any existing Company, except such Companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new Company.			
For registering any document hereby required or authorised to be registered, other than the memorandum of association . . . . .	5	0	0
For making a record of any fact hereby authorised or required to be recorded by the Registrar of Companies, a fee of . . . . .	5	0	0

#### FORM D.

##### FORM OF STATEMENT REFERRED TO IN PART III OF THE ACT.

\*The Capital of the Company is Rs. , divided into shares of each.  
 The number of shares issued is . Calls to the amount of Rs. per share have been made, under which the sum of Rs. has been received.

The Liabilities of the Company on the first day of January (or July) were:—

Debts owing to sundry persons by the Company:

Under decree, Rs.

On mortgages or bonds, Rs.

On notes, bills or hundis, Rs.

On other contracts, Rs.

On estimated liabilities, Rs.

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\* If the Company has no capital divided into shares, the portion of the statement relating to capital and shares must be omitted.

(*First Schedule.—Form D: Form of Statement referred to in Part III of the Act. Second Schedule—Form A. Memorandum of Association of a Company limited by Shares*)

The assets of the Company on that day were:—

Government securities [*stating them*], Rs.

Bills of exchange, hundis and promissory notes, Rs.

Cash at the Bankers, Rs.

Other securities, Rs.

## SECOND SCHEDULE.

(*See section 95*)

### FORM A.

MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES.

1st.—The name of the Company is “The \_\_\_\_\_ Company,  
Limited.”

2nd.—The registered office of the Company will be situate in \_\_\_\_\_

3rd.—The objects for which the Company is established are “  
\_\_\_\_\_ and the doing all such other things as are incidental or con-  
ducive to the attainment of the above objects.”

4th.—The liability of the members is limited.

5th.—The capital of the Company is Rs. \_\_\_\_\_, divided into  
\_\_\_\_\_ shares of Rs. \_\_\_\_\_ each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the Capital of the Company set opposite our respective names:—

Names, addresses and descriptions of subscribers	Number of shares taken by each subscriber.
1. <i>A. B.</i> of _____	_____
2. <i>C. D.</i> „ _____	_____
3. <i>E. F.</i> „ _____	_____
4. <i>G. H.</i> „ _____	_____
5. <i>I. J.</i> „ _____	_____
6. <i>K. L.</i> „ _____	_____
7. <i>M. N.</i> „ _____	_____
Total shares taken _____	_____

Dated the \_\_\_\_\_ day of \_\_\_\_\_

Witness to the above signatures.

*O. P.* of \_\_\_\_\_

(*Second Schedule—Form B Memorandum and Articles of Association of a Company limited by guarantee, and not having a Capital divided into Shares*)

### FORM B.

#### MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND NOT HAVING A CAPITAL DIVIDED INTO SHARES.

##### *Memorandum of Association.*

- 1st.—The name of the Company is “The Mutual Calcutta Marine Association, Limited.”
- 2nd.—The registered office of the Company will be situate in Calcutta.
- 3rd.—The objects for which the Company is established are “the mutual insurance of ships belonging to members of the Company, and the doing all such other things as are incidental or conducive to the attainment of the above objects”
- 4th.—Every member of the Company undertakes to contribute to the assets of the Company, in the event of the same being wound up during the time that he is a member or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and the costs, charges and expenses of winding-up the same, and for the adjustment of the rights of the contributors amongst themselves, such amount as may be required not exceeding Rs. 100.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this memorandum of association.

##### *Names, Addresses and Descriptions of Subscribers.*

1. A. B. of
2. C. D. „
3. E. F. „
4. G. H. „
5. I. J. „
6. K. L. „
7. M. N. „

Dated the                      day of  
Witness to the above signatures.

O. P. of

(*Second Schedule.—Form B · Memorandum and Articles of Association of a Company limited by guarantee, and not having a Capital divided into Shares*)

*Articles of Association to accompany preceding Memorandum of Association.*

(1) The Company, for the purpose of registration, is declared to consist of five hundred members

(2) The directors hereinafter mentioned may, whenever the business of the association requires it, register an increase of members.

*Definition of Members.*

(3) Every person shall be deemed to have agreed to become a member of the Company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

*General Meetings.*

(4) The first general meeting shall be held at such time, not being more than three months after the incorporation of the Company, and at such place, as the directors may determine.

(5) Subsequent general meetings shall be held at such time and place as may be prescribed by the Company in general meeting; and, if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

(6) The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

(7) The directors may, whenever they think fit, and they shall, upon a requisition made in writing by any five or more members, convene an extraordinary general meeting.

(8) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.

(9) Upon the receipt of such requisition, the directors shall forthwith proceed to convene a general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists or any other five members may themselves convene a meeting.

*Proceedings at General Meetings.*

(10) Seven days' notice at the least, specifying the place, the day and the hour of meeting, and, in case of special business, the general nature of

(Second Schedule.—Form B: Memorandum and Articles of Association of a Company limited by guarantee, and not having a Capital divided into Shares.)

such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the Company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting

(11) All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance-sheets and the ordinary report of the directors.

(12) No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of such business. Such quorum shall be ascertained as follows, that is to say:—if the members of the Company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty; with this limitation, that no quorum shall in any case exceed thirty

(13) If within one hour from the time appointed for the meeting, a quorum of members is not present, the meeting, if convened upon the requisition of the members, shall be dissolved. In any other case, it shall stand adjourned to the same day in the following week, at the same time and place; and, if at such adjourned meeting a quorum of members is not present, it shall be adjourned *sine die*.

(14) The chairman (if any) of the directors shall preside as chairman at every general meeting of the Company.

(15) If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of such meeting

(16) The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place; but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(17) At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

(Second Schedule.—Form B *Memorandum and Articles of Association of a Company limited by guarantee, and not having a Capital divided into Shares.*)

(18) If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs; and the result of such poll shall be deemed to be the resolution of the Company in general meeting.

#### *Votes of Members.*

(19) Every member shall have one vote and no more.

(20) If any member is a lunatic or idiot, he may vote by his committee or other legal curator; if any member is a minor, he may vote by his guardian or any one of his guardians if more than one.

(21) No member shall be entitled to vote at any meeting unless all moneys due from him to the Company have been paid.

(22) Votes may be given either personally or by proxies. A proxy shall be appointed in writing under the hand of the appointer, or, if such appointer is a Corporation, under its common seal.

(23) No person shall be appointed a proxy who is not a member, and the instrument appointing him shall be deposited at the registered office of the Company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

(24) Any instrument appointing a proxy shall be in the following form:—

*Company, Limited.*

I, \_\_\_\_\_, of \_\_\_\_\_, being a member of the \_\_\_\_\_ Company, Limited, hereby appoint \_\_\_\_\_ of \_\_\_\_\_, as my proxy, to vote for me and on my behalf at the [ordinary or extraordinary as the case may be] general meeting of the Company to be held on the \_\_\_\_\_ day of \_\_\_\_\_ and at any adjournment thereof [or at any meeting of the Company that may be held in the year \_\_\_\_\_].

As witness my hand, this \_\_\_\_\_ day of \_\_\_\_\_

Signed by the said \_\_\_\_\_ in the presence of \_\_\_\_\_

#### *Directors.*

(25) The number of the directors and the names of the first directors shall be determined by the subscribers of the memorandum of association.

(26) Until directors are appointed, the subscribers of the memorandum of association shall be deemed to be directors.

(Second Schedule.—Form B. Memorandum and Articles of Association of a Company limited by guarantee, and not having a Capital divided into Shares.)

*Powers of Directors.*

(27) The business of the Company shall be managed by the directors, who may exercise all such powers of the Company as are not hereby required to be exercised by the Company in general meeting; but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

*Election of Directors.*

(28) The directors shall be elected annually by the Company in general meeting.

*Business of Company.*

(Here insert rules as to mode in which business of insurance is to be conducted.)

*Accounts.*

(29) The accounts of the Company shall be audited by a committee of five members, to be called the audit-committee.

(30) The first audit-committee shall be nominated by the directors out of the body of members.

(31) Subsequent audit-committees shall be nominated by the members at the ordinary general meeting in each year.

(32) The audit-committee shall be supplied with a copy of the balance-sheet, and it shall be their duty to examine the same with the accounts and vouchers relating thereto.

(33) The audit-committee shall have a list delivered to them of all books kept by the Company, and they shall at all reasonable times have access to the books and accounts of the Company.

They may, at the expense of the Company, employ accountants or other persons to assist them in investigating such accounts, and they may, in relation to such accounts, examine the directors or any other officer of the Company

(34) The audit-committee shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet

(*Second Schedule.—Form B: Memorandum and Articles of Association of a Company limited by guarantee, and not having a Capital divided into Shares.*)

containing the particulars required by these regulations and properly drawn up, so as to exhibit a true and correct view of the state of the Company's affairs, and, in case they have called for explanations or information from the directors, whether such explanations or information have or has been given by the directors, and whether they or it have or has been satisfactory; and such report shall be read together with the report of the directors at the ordinary meeting.

#### *Notices.*

(35) A notice may be served by the Company upon any member, either personally, or by sending it through the post in a letter addressed to such member at his registered place of abode

(36) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and, in proving such service, it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office.

#### *Winding-up.*

(37) The Company shall be wound up voluntarily, whenever an extraordinary resolution, as defined by the Indian Companies Act, 1882, is passed, requiring the Company to be wound up voluntarily.

#### *Names, Addresses and Descriptions of Subscribers*

1	A. B of	...	...	Merchant.
2	C. D. „	...	...	„
3.	E. F „	...	...	„
4	G. H. „	...	...	„
5.	I. J. „	...	...	„
6	K L. „	...	...	„
7.	M. N. „	...	...	„

Dated the                      day of,                      18                      .

Witness to the above signatures.

O. P. of

(Second Schedule.—Form C. Memorandum and Articles of Association of a Company limited by guarantee, and having a Capital divided into Shares)

## FORM C.

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND HAVING A CAPITAL DIVIDED INTO SHARES.

*Memorandum of Association.*

1st —The name of the Company is “The Hotel Company, Limited”

2nd —The registered office of the Company will be situate in .

3rd —The objects for which the Company is established are “the facilitating travelling in by providing hotels and conveyances by sea and by land for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above objects”

4th —Every member of the Company undertakes to contribute to the assets of the Company, in the event of the same being wound up during the time that he is a member or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and the costs, charges and expenses of winding-up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding Rs. 200.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this memorandum of association.

*Names, Addresses and Descriptions of Subscribers.*

1. A. B of
2. C. D. „
3. E. F. „
4. G. H. „
5. I. J. „
6. K. L. „
7. M. N. „

Dated the                      day of                      18

Witness to the above signatures.

O. P. of

(Second Schedule.—Form C : Memorandum and Articles of Association of a Company limited by guarantee, and having a Capital divided into Shares. Form D : Memorandum and Articles of Association of an Unlimited Company having a Capital divided into Shares.)

*Articles of Association to accompany preceding Memorandum of Association.*

1. The capital of the Company shall consist of five lakhs of rupees divided into five thousand shares of one hundred rupees each.

2. The directors may, with the sanction of the Company in general meeting, reduce the amount of shares.

3. The directors may, with the sanction of the Company in general meeting, cancel any shares belonging to the Company.

4. All the articles of Table A shall be deemed to be incorporated with these articles, and to apply to the Company.

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the Company set opposite our respective names :—

Names, addresses and descriptions of subscribers	Number of shares taken by each subscriber
1. A. B. of .	
2. C. D. „ .	
3. E. F. „ .	
4. G. H. „ .	
5. I. J. „ .	
6. K. L. „ .	
7. M. N. „ .	
Total shares taken	

Dated the                      day of                      18                      .

Witness to the above signatures.

*O P.* of

FORM D.

MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY HAVING A CAPITAL DIVIDED INTO SHARES.

*Memorandum of Association.*

1st.—The name of the Company is “The Patent                      Company.”

2nd.—The registered office of the Company will be situate in                      .

3rd.—The objects for which the Company is established are “the working of a patent method of                      , of which method *O P.* of is the sole patentee.”

(Second Schedule—Form D Memorandum and Articles of Association  
of an Unlimited Company having a Capital divided into Shares)

We, the several persons whose names are subscribed, are desirous of being formed into a Company in pursuance of this memorandum of association.

*Names, Addresses and Descriptions of Subscribers.*

- 1 *A. B.* of
- 2 *C. D.* „
- 3 *E. F.* „
- 4 *G. H.* „
- 5 *I. J.* „
- 6 *K. L.* „
- 7 *M. N.* „

Dated the                      day of                      18                      .

Witness to the above signatures.

Q R of                      .

*Articles of Association to accompany the preceding Memorandum of Association*

*Capital of the Company*

The capital of the Company is twenty thousand rupees, divided into twenty shares of one thousand rupees each

*Application of Table A*

All the articles of Table A shall be deemed to be incorporated with these articles, and to apply to the Company.

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the Company set opposite our respective names.—

Names, addresses and descriptions of subscribers	Number of shares taken by subscribers
1 <i>A. B.</i> of	
2 <i>C. D.</i> „	.
3 <i>E. F.</i> „	.
4. <i>G. H.</i> „	.
5 <i>I. J.</i> „	.
6. <i>K. L.</i> „	.
7. <i>M. N.</i> „	.
Total shares taken	.

Dated the                      day of                      18                      .

Witness to the above signatures.

Q R. of

*(Second Schedule.—Form E)*

## FORM E

AS REQUIRED BY THE SECOND PART OF THE FOREGOING ACT.

Summary of capital and shares of the                      Company, made up to  
the                      day of                      .

Nominal capital Rs.                      , divided into  
                    shares of Rs.                      each.

Number of shares taken up to the                      day of                      .

There has been called up on each share Rs.                      .

Total amount of calls received, Rs.                      .

Total amount of calls unpaid, Rs.                      .

List of persons holding shares in the                      Company on the  
                    day of                      and of persons who have held shares  
therein at any time during the year immediately preceding the said  
day of                      , showing their names and addresses and an account of  
the shares so held.



(Table B in Schedule to Act XIX of 1857.)

## APPENDIX.

(TABLE B IN SCHEDULE TO ACT XIX OF 1857)<sup>1</sup>

## REGULATIONS FOR MANAGEMENT OF THE COMPANY.

*Shares.*

1. No person shall be deemed to have accepted any share in the Company unless he has testified his acceptance thereof by writing under his hand in such form as the Company from time to time directs.

2. The Company may from time to time make such calls upon the shareholders, in respect of all moneys unpaid on their shares, as they think fit, provided that twenty-one days' notice at least is given of each call; and each shareholder shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the Company.

3. A call shall be deemed to have been made at the time when the resolution authorizing such call was passed

4. If, before or on the day appointed for payment, any shareholder does not pay the amount of any call to which he is liable, then such shareholder shall be liable to pay interest for the same at the rate of 5 per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.

5 The Company may, if they think fit, receive, from any of the shareholders willing to advance the same, all or any part of the moneys due upon their respective shares beyond the sums actually called for; and upon the moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the Company may pay interest at such rate as the shareholder paying such sum in advance and the Company agree upon.

6. If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

7. The Company may decline to register any transfer of shares made by a shareholder who is indebted to them.

8. Every shareholder shall, on payment of such sum not exceeding eight annas as the Company may prescribe, be entitled to a certificate, under the common seal of the Company, specifying the share or shares held by him, and the amount paid up thereon.

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<sup>1</sup> See s 2 (c) of the Indian Companies Act, 1882 (VI of 1882), *supra*, p 101 The Table is reproduced here as an Appendix to Act VI of 1882 for convenience of reference.

*(Table B in Schedule to Act XIX of 1857.)*

9. If such certificate is worn out or lost, it may be renewed on payment of such sum, not exceeding eight annas, as the Company may prescribe.

10. The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

*Transmission of Shares.*

11. The executors or administrators or representatives of a deceased shareholder shall be the only persons recognized by the Company as having any title to his share.

12 Any person becoming entitled to a share in consequence of the death, bankruptcy or insolvency of any shareholder, or in consequence of the marriage of any female shareholder or in any way other than by transfer, may be registered as a shareholder upon such evidence being produced as may from time to time be required by the Company.

13 Any person who has become entitled to a share in any way other than by transfer, may, instead of being registered himself, elect to have some person to be named by him registered as a holder of such share.

14. The person so becoming entitled shall testify such election by executing to his nominee a transfer of such share.

15. The instrument of transfer shall be presented to the Company, accompanied with such evidence as they may require to prove the title of the transferor, and thereupon the Company shall register the transferee as a shareholder.

*Forfeiture of Shares.*

16. If any shareholder fails to pay any call due on the appointed day, the Company may, at any time thereafter, during such time as the call remains unpaid, serve a notice on him, requiring him to pay such call, together with any interest that may have accrued by reason of such non-payment.

17. The notice shall name a further date, and a place or places, being a place or places at which calls of the Company are usually made payable, on and at which such call is to be paid ; it shall also state that, in the event of non-payment at the time and place appointed, the shares in respect of which such call was made will be liable to be forfeited

18. If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may be forfeited by a resolution of the directors to that effect.

(Table B in Schedule to Act XIX of 1857.)

19. Any shares so forfeited shall be deemed to be the property of the Company, and may be disposed of in such manner as the Company thinks fit.

20. Any shareholder whose shares have been forfeited shall notwithstanding be liable to pay to the Company, all calls owing upon such shares at the time of the forfeiture.

*Increase in Capital.*

21. The Company may, with the sanction of the Company previously given in general meeting, increase its capital.

22. Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions in all respects, whether with reference to the payment of calls, or the forfeiture of shares on non-payment of calls or otherwise, as if it had been part of the original capital.

*General Meetings.*

23. The first general meeting shall be held at such time, not being more than twelve months after the incorporation of the Company, and at such place as the directors may determine

24. Subsequent general meetings shall be held at such time and place as may be prescribed by the Company in general meeting; and, if no other time or place is prescribed, a general meeting shall be held on the <sup>1</sup>[first Monday in February] in every year, at such place as may be determined by the directors.

25. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

26. The directors may, whenever they think fit, and they shall, upon a requisition made in writing by any number of shareholders holding in the aggregate not less than one-fifth part of the shares of the Company, convene an extraordinary general meeting.

27. Any requisition so made by the shareholders shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.

28. Upon the receipt of such requisition, the directors shall forthwith proceed to convene a general meeting; if they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other shareholders holding the required number of shares, may themselves convene a meeting.

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<sup>1</sup> The bracketted portion read originally as follows "      day of      ".

*(Table B in Schedule to Act XIX of 1857)*

29 Seven days' notice at the least, specifying the place, the time, the hour of meeting, and the purpose for which any general meeting is to be held, shall be given by advertisement, or in such other manner (if any) as may be prescribed by the Company.

30. Any shareholder may, on giving not less than three days' previous notice, submit any resolution to a meeting beyond the matters contained in the notice given of such meeting.

31. The notice required of a shareholder shall be given by leaving a copy of the resolution at the registered office of the Company.

32. No business shall be transacted at any meeting, except the declaration of a dividend, unless a quorum of shareholders is present at the commencement of such business; and such quorum shall be ascertained as follows (that is to say) · if the shareholders belonging to the Company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional shareholders up to fifty, and one for every ten additional shareholders after fifty, with this limitation, that it shall not be necessary for any quorum in any case to exceed forty.

33. If within one hour from the time appointed for the meeting the required number of shareholders is not present, the meeting, if convened upon the requisition of the shareholders, shall be dissolved: in any other case it shall stand adjourned to the following day at the same time and place; and, if at such adjourned meeting the required number of shareholders is not present, it shall be adjourned *sine die*.

34. The Chairman (if any) of the Board of Directors shall preside as chairman at every meeting of the Company.

35 If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the shareholders present shall choose some one of their number to be chairman of such meeting.

36. The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place; but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

37. At any general meeting, unless a poll is demanded by at least five shareholders, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

*(Table B in Schedule to Act XIX of 1857.)*

38. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the Company in general meeting

*Votes of Shareholders*

39 Every shareholder shall have one vote for every share up to ten; he shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares held by him beyond the first hundred shares.

40 If any shareholder is a lunatic or idiot, he may vote by his committee; and, if any shareholder is a minor, he may vote by his guardian, or any one of his guardians if more than one.

41. If more persons than one are jointly entitled to a share or shares, the person whose name stands first in the register of shareholders as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same

42. No shareholder shall be entitled to vote at any meeting unless all calls due from him have been paid, nor until he shall have been possessed of his shares three calendar months, unless such shares shall have been acquired or shall have come by bequest, or by marriage, or by succession to an intestate estate, or by any deed of settlement after the death of any person who shall have been entitled for life to the dividends of such shares

43 Votes may be given either personally or by proxies; a proxy shall be appointed in writing under the hand of the appointor, or, if such appointor is a corporation, under their common seal.

44. No person shall be appointed a proxy who is not a shareholder, and the instrument appointing him shall be deposited at the registered office of the Company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote, but no instrument appointing a proxy shall be valid after the expiration of one month from the date of its execution

*Directors.*

45 The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association

46 Until directors are appointed, the subscribers of the memorandum of association shall for all the purposes of this Act be deemed to be directors.

(Table B in Schedule to Act XIX of 1857)

*Powers of Directors*

47 The business of the Company shall be managed by the directors, who may exercise all such powers of the Company as are not by this Act or by the articles of association (if any) declared to be exercisable by the Company in general meeting, subject nevertheless to any regulations of the articles of association, to the provisions of this Act<sup>1</sup>, and to such regulations, not being inconsistent with the aforesaid regulations or provisions, as may be prescribed by the Company in general meeting; but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made

*Disqualification of Directors.*

48 The office of director shall be vacated—

if he holds any other office or place of profit under the Company;

if he becomes bankrupt or insolvent;

if he is concerned in or participates in the profits of any contract with the Company,

if he participates in the profits of any work done for the Company.

But the above rules shall be subject to the following exceptions—that no director shall vacate his office by reason of his being a shareholder in any incorporated Company which has entered into contracts with or done any work for the Company of which he is director, nevertheless he shall not vote in respect of such contract or work, and, if he does so vote, his vote shall not be counted, and he shall incur a penalty not exceeding five hundred rupees.

*Rotation of Directors.*

49 At the first ordinary meeting after the incorporation of the Company, the whole of the directors shall retire from office, and, at the first ordinary meeting in every subsequent year, one-third of the directors for the time being, or, if their number is not a multiple of three, then the number nearest to one-third, shall retire from office

50 The one-third or other nearest number to retire during the first and second years ensuing the incorporation of the Company shall, unless the directors agree among themselves, be determined by ballot, in every subsequent year the one-third or other nearest number who have been longest in office shall retire.

51. A retiring director shall be re-eligible.

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<sup>1</sup> Should now be read as referring to Act VI of 1882.

(Table B in Schedule to Act XIX of 1857.)

52. The Company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons

53. If at any meeting at which an election of directors ought to take place no such election is made, the meeting shall stand adjourned till the next day, at the same time and place; and, if at such adjourned meeting no election takes place, the former directors shall continue to act until new directors are appointed at the first ordinary meeting of the following year.

54. The Company may from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office

55. Any casual vacancy occurring in the Board of Directors may be filled up by the directors; but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred

*Proceedings of Directors*

56. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business, questions arising at any meeting shall be decided by a majority of votes; in case of an equality of votes, the chairman, in addition to his original vote, shall have a casting vote. a director may at any time summon a meeting of the directors

57. The directors may elect a chairman of their meetings and determine the period for which he is to hold office, but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting

58. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit: any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

59. A committee may elect a chairman of their meetings: if no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

60. A committee may meet and adjourn as they think proper; questions at any meeting shall be determined by a majority of votes of the members present; and, in case of an equal division of votes, the chairman shall have a casting vote.

*(Table B in Schedule to Act XIX of 1857)*

61 All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director

62 The directors shall cause minutes to be made in books provided for the purpose—

- (1) of all appointments of officers made by the directors,
- (2) of the names of the directors present at each meeting of directors and committees of directors;
- (3) of all orders made by the directors and committees of directors; and
- (4) of all resolutions and proceedings of meetings of the Company, and of the directors and committees of directors

And any such minute as aforesaid, if signed by any person purporting to be the chairman of any meeting of directors, or committee of directors, shall be receivable in evidence without any further proof.

63. The Company, in general meeting, may, by a special resolution, remove any director before the expiration of his period of office, and appoint another qualified person in his stead the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

*Dividends.*

64. The directors may, with the sanction of the Company in general meeting, declare a dividend to be paid to the shareholders in proportion to their shares

65. The directors may, before recommending any dividend, set aside out of the profits of the Company such sum as they think proper as a reserved fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the works connected with the business of the Company, or any part thereof, and the directors may invest the sum so set apart as a reserved fund upon such securities as they, with the sanction of the Company, may select.

66 The directors may deduct from the dividends payable to any shareholder all such sums of money as may be due from him to the Company on account of calls or otherwise

67. Notice of any dividend that may have been declared shall be given to each shareholder, or sent by post or otherwise to his registered place of

*(Table B in Schedule to Act XIX of 1857.)*

abode; and all dividends unclaimed for three years, after having been declared, may be forfeited by the directors for the benefit of the Company.

68 No dividend shall bear interest as against the Company.

*Accounts*

69. Once at the least in every year the directors shall lay before the Company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.

70 The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries and other like matters, every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting, and, in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year

71. A balance-sheet shall be made out in every year, and laid before the general meeting of the Company; and such balance-sheet shall contain a summary of the property and liabilities of the Company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit

72 A printed copy of such balance-sheet shall, seven days previously to such meeting, be delivered at or sent by post to the registered address of every shareholder.

*Audit.*

73. The accounts of the Company shall be examined, and the correctness of the balance-sheet ascertained by one or more auditor or auditors to be elected by the Company in general meeting

74 If not more than one auditor is appointed, all the provisions herein contained relating to auditors shall apply to him.

75 The auditors need not be shareholders in the Company: no person is eligible as an auditor who is interested otherwise than as a shareholder in any transaction of the Company; and no director or other officer of the Company is eligible during his continuance in office.

76 The election of auditors shall be made by the Company at their ordinary meeting, or, if there are more than one at their first ordinary meeting in each year.

*(Table B in Schedule to Act XIX of 1857)*

77. The remuneration of the auditors shall be fixed by the Company at the time of their election

78. Any auditor shall be re-eligible on his quitting office.

79. If any casual vacancy occurs in the office of auditor, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

80. If no election of auditors is made in manner aforesaid, the local Government may, on the application of one-fifth in number of the shareholders of the Company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the Company for his services.

81. Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto

82. Every auditor shall have a list delivered to him of all books kept by the Company, and he shall at all reasonable times have access to the books and accounts of the Company, he may, at the expense of the Company, employ accountants or other persons to assist him in investigating such accounts, and he may in relation to such accounts examine the directors or any other officer of the Company

83. The auditors shall make a report to the shareholders upon the balance-sheet and accounts; and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet, containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs; and, in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory: and such report shall be read, together with a report of the directors, at the ordinary meeting.

*Notices.*

84. Notices requiring to be served by the Company upon the shareholders may be served either personally, or by leaving the same, or sending them through the post in a letter addressed to the shareholders, at their registered places of abode

85. All notices directed to be given to the shareholders shall, with respect to any share to which persons are jointly entitled, be given to whichever of the said persons is named first in the register of shareholders; and notice so given shall be sufficient notice to all the proprietors of such share.



(Secs. 1-4.)

ACT No. VII of 1882<sup>1</sup>

[24th February, 1882.]

An Act to amend the law relating to Powers-of-Attorney.

For the purpose of amending the law relating to Powers-of-Attorney;  
It is hereby enacted as follows:—

Short title

1. This Act may be called the Powers-of-Attorney Act, 1882

Local extent

It applies to the whole of British India;

Commence-  
ment

and it shall come into force on the first day of May, 1882.

Execution  
under power-  
of-attorney.

2 The donee of a power-of-attorney may, if he thinks fit, execute or do any assurance, instrument or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the power, and every assurance, instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof.

This section applies to powers-of-attorney created by instruments executed either before or after this Act comes into force

Payment by  
attorney  
under power,  
without  
notice of  
death, etc.,  
good.

3. Any person making or doing any payment or act in good faith, in pursuance of a power-of-attorney, shall not be liable in respect of the payment or act by reason that, before the payment or act, the donor of the power had died or become lunatic, of unsound mind, or bankrupt or insolvent, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, insolvency or revocation was not, at the time of the payment or act, known to the person making or doing the same

But this section shall not affect any right against the payee of any person interested in any money so paid, and that person shall have the like remedy against the payee as he would have had against the payer, if the payment had not been made by him

This section applies only to payments and acts made or done after this Act comes into force.

Deposit of  
original  
instruments

4. (a) An instrument creating a power-of-attorney, its execution being verified by affidavit, statutory declaration or other sufficient evidence, may,

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1881, Pt V, p 1475; for Proceedings in Council, see *ibid*, 1881, Supplement, p 1409, and *ibid*, 1882, Supplement, p 204

Act VII of 1882 has been declared in force in the Santhál Parganas by s 3, of the Santhál Parganas Settlement Regulation (III of 1872) as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886), printed, Bengal Code, Vol I, Ed 1889, p 597.

## (Sec. 5.)

with the affidavit or declaration, if any, be deposited in the High Court within the local limits of whose jurisdiction the instrument may be

creating  
powers-of-  
attorney

(b) A separate file of instruments so deposited shall be kept; and any person may search that file, and inspect every instrument so deposited; and a certified copy thereof shall be delivered out to him on request

(c) A copy of an instrument so deposited may be presented at the office and may be stamped or marked as a certified copy, and, when so stamped or marked, shall become and be a certified copy

(d) A certified copy of an instrument so deposited shall, without further proof, be sufficient evidence of the contents of the instrument and of the deposit thereof in the High Court

<sup>1</sup>(e) The High Court may, from time to time, make rules for the purposes of this section, and prescribing, with the concurrence of the Local Government, the fees to be taken under clauses (a), (b) and (c).

(f) Throughout British Burma <sup>2</sup>, the Court of the Recorder of Rangoon shall, for the purposes of this section, be deemed to be the High Court

(g) This section applies to instruments creating powers-of-attorney, executed either before or after this Act comes into force.

5. A married woman, whether a minor or not, shall, by virtue of this Act, have power, as if she were unmarried and of full age, by a non-testamentary instrument, to appoint an attorney on her behalf, for the purpose of executing any non-testamentary instrument or doing any other act which she might herself execute or do; and the provisions of this Act, relating to instruments creating powers-of-attorney, shall apply thereto

Power-of-  
attorney of  
married  
women

This section applies only to instruments executed after this Act comes into force.

6. [*Act XXVIII of 1866, s 39, repealed*] *Rep by the Repealing and Amending Act, 1891 (XII of 1891).*

<sup>1</sup> For instance of rules made and fees prescribed under this clause, see Bombay List of Local Rules and Orders, Vol I, Ed 1896, p 165

<sup>2</sup> This reference to British Burma should now be read as referring to Lower Burma, see the Upper Burma Laws Act, 1886 (XX of 1886), s. 4 See now the Burma Laws Act 1898 (XIII of 1898), s 7 This Act repeals Act XX of 1886

ACT No. VIII OF 1882 <sup>1</sup>

[2nd March, 1882]

An Act to amend the Indian Penal Code <sup>2</sup>

Preamble	For the purpose of amending the Indian Penal Code, <sup>2</sup> It is hereby enacted as follows —
Amendment of section 40, clause 2, of Indian Penal Code	1. In the second clause of section 40 of the said Code, before the figure “109,” the figures “64, 65, 66, 71” shall be inserted <sup>3</sup>
Amendment of section 64 of same Code	2. In section 64 of the said Code, for the first twelve words, the following shall be substituted, namely — “In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, “and in every case of an offence punishable <sup>3</sup> with fine only, in which the offender is sentenced to a fine.”
Amendment of section 67 of same Code	3. In section 67, after the words “fine only,” the words “the imprisonment which the Court imposes in default of payment of the fine shall be simple, and” shall be inserted
Addition to section 71 of same Code	4 To section 71 of the said Code the following clause shall be added :— “Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or “where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence, “the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.”
Amendment of section 73 of same Code.	5 In section 73 of the said Code, for the words “be less than a” the words “shall not exceed one” shall be substituted

<sup>1</sup> Short title, ‘The Indian Penal Code Amendment Act, 1882’ See the Indian Short Titles Act, 1897 (XIV of 1897)

For Statement of Objects and Reasons, see Gazette of India, 1881, Pt V, p 151; for Proceedings in Council, see *ibid*, 1881, Supplement, p 256, and *ibid*, 1882, Supplement p 329.

Act VIII of 1882 has been declared in force in the Santhál Parganas by s 3 of the Santhál Parganas Settlement Regulation (III of 1872) as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886), printed, Bengal Code, Vol I, Ed 1889, p 597; in Upper Burma generally (except the Shan States), by s 6 of the Upper Burma Laws Act, 1886 (XX of 1886), see now the Burma Laws Act, 1898 (XIII of 1898), s 4 (1) and Schd I, under the provisions of this Act it has been declared in force as part of the Indian Penal Code (Act XLV of 1860)

<sup>2</sup> Printed, General Acts, Vol I, Ed 1898, p 240

<sup>3</sup> For further amendment see the Indian Criminal Law Amendment Act, 1886 (X of 1886), printed, General Acts, Vol. V.

6. In section 214 of the said Code, for the *exception*, the following shall be substituted, namely:—  
*Exception*—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded.” New *exception* to section 214 of same Code
7. In section 309 of the said Code, for the last seven words the words “or with fine or with both” shall be substituted Amendment of section 309 of same Code
8. In section 335 of the said Code, before the word “causes” the word “voluntarily” shall be inserted. Amendment of section 335 of same Code.
9. In section 410 of the said Code, after the words “designated as ‘stolen property’” the following words shall be inserted, namely.—  
“whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without British India”; and the words “offence of” shall be omitted. Amendment of section 410 of same Code.
10. In section 435 of the said Code, after the words “or upwards” the following words shall be inserted, namely:—  
“or (where the property is agricultural produce) ten rupees or upwards.” Addition to section 435 of same Code
11. This Act extends to the whole of British India; and shall come into force on the first day of January, 1883 Local extent  
Commence-  
ment

ACT No. IX OF 1882.<sup>1</sup>

[2nd March, 1882]

An Act to amend the Prisoners' Act, 1871.

WHEREAS it is expedient to amend Act No V of 1871 (to consolidate the laws relating to Prisoners confined by order of a Court), It is hereby enacted as follows.— Preamble

1 This Act may be called “The Prisoners' Act Amendment Act, 1882”: Short title

it extends to the whole of British India<sup>2</sup>,  
and it shall come into force on the first day of January, 1883 Local extent.  
Commence-  
ment.

2. For section thirty-three of the said Act the following shall be substituted (namely).— Section sub-  
stituted for  
section 33

“33. The Governor General in Council may, from time to time, appoint places within British India to which persons sentenced to transportation shall be sent. and the Local Government, or some officer duly authorized in this behalf by the Local Government, shall give orders for the removal Appoint-  
ment of  
places to  
which per-  
sons sen-  
tenced to

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1881, Pt V, p 1479; and for Proceedings in Council, see *ibid*, Supplement, p 1413, and *ibid*, 1882, Supplement, p 330

<sup>2</sup> The Act has been declared in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation (III of 1872) as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886), printed, Bengal Code, Ed 1889, p 597, and in Upper Burma generally (except the Shan States) by the Upper Burma Laws Act, 1886 (XX of 1886), see now the Burma Laws Act, 1898 (XIII of 1898), s 4 (1) and Schd I, under the provisions of this Act it has been declared in force in Upper Burma as part of Act IX of 1871.

transporta-  
tion shall be  
sent, and  
power to  
direct  
removal of  
such persons  
to such  
places

of such persons to the places so appointed, except when sentence of transportation is passed on a person already undergoing transportation under a sentence previously passed for another offence”

## THE INDIAN SALT ACT, 1882.

### CONTENTS.

#### PREAMBLE.

#### CHAPTER I.

##### PRELIMINARY.

#### SECTIONS.

1. Short title.  
Commencement  
Local extent  
Power to extend Act
2. Repeal of enactments.
3. Interpretation-clause.
4. Powers of Commissioner of Division by whom to be exercised.
5. Commissioner of Northern India Salt-revenue.

#### CHAPTER II.

##### MANUFACTURE AND REFINING OF SALT AND SALTPETRE

6. Power of Governor General in Council—  
to regulate manufacture and refining of salt and saltpetre;  
to fix fees for licenses;  
to regulate the collection of duties;  
to regulate possession of salt in vicinity of places where saltpetre is manufactured;  
to regulate possession of salt in vicinity of places where salt is manufactured

#### CHAPTER III.

##### DUTY AND PRICE OF SALT.

7. Power of Governor General in Council—  
to impose a duty on manufacture of salt;  
to reduce or remit duties,  
to fix minimum price of salt excavated, etc., by Government
8. Power of Local Government to fix minimum price of salt excavated, etc.

#### CHAPTER IIIA

##### INDUS PREVENTIVE LINE

- 8A. Power to define zones and establish chains of posts.
- 8B. Effect of defining a zone and establishing a chain of posts.

#### CHAPTER IV.

##### OFFENCES AGAINST THE SALT-REVENUE

9. Penalties
10. Punishment on second and subsequent convictions.

## SECTIONS.

11. Charge by whom to be preferred.  
Limitation  
Jurisdiction
12. Confiscation of articles in respect of which offence committed
13. Power to levy additional duty as penalty
14. Punishment for connivance at offences mentioned in section 9.

## CHAPTER V

## POWERS OF STOPPAGE, SEARCH, SEIZURE AND ARREST

15. Power to search places where article is manufactured under license.
16. Power to detain suspected person and to seize goods liable to confiscation
17. Power to arrest
18. Procedure of officer having reason to believe unlawful manufacture.  
Power to enter and search.
19. Failure of Police-officer to attend
20. Report of arrest, seizure and search.
21. Procedure in respect of articles seized
22. Procedure on detention of article subject to additional duty
23. Procedure in respect of person arrested
24. Officers required to assist Salt-revenue-officers.
25. Vexatious search, seizure, etc., by Salt-revenue-officer.
26. Power to regulate seizures and disposal of things seized

## CHAPTER VI

## MISCELLANEOUS.

27. Power to prohibit import and transit of salt.
28. Further matters for which Governor General in Council may make rules
29. Publication of rules
30. Power to confer powers of Assistant Commissioner and Salt-revenue officers
31. [*Repealed*]

## THE SCHEDULE — ENACTMENTS REPEALED

ACT No XII OF 1882<sup>1</sup>

[*10th March, 1882.*]

An Act for regulating the duty on Salt, and for other purposes.

WHEREAS it is expedient to amend the law relating to the levy of duty on salt, and to the import and transit of salt, and the manufacture of salt

Preamble.

<sup>1</sup> For Proceedings in Council, see the Gazette of India, 1882, Supplement, p 261, and Extra Supplement, p 34

Act XII of 1882 has been declared in force in the Santhal Parganas, see Calcutta Gazette, 1889, Pt I, p 737; and in British Baluchistan, see the British Baluchistan Laws Regulation, 1890 (I of 1890), s 3, printed, Baluchistan Code, Ed 1890, p 69

Ss 1, 2, 6, 7 and 8 and Chapter IV has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898) So much of the Act as was in force in Lower Burma had previously been extended by Notification under the Scheduled Districts Act, 1874 (XIV of 1874), see Gazette of India, 1889, Pt I, p. 334.

## (Chapter I—Preliminary Secs 1-3)

and saltpetre, into, over and in British India, It is hereby enacted as follows —

## CHAPTER I

## PRELIMINARY

Short title	1. This Act may be called the Indian Salt Act, 1882, and it shall come
Commence- ment	into force at once
Local extent	This section, sections 2, 7 and 8, and so much of this Act as refers to offences against any of its provisions or against any rules made under it, extend to the whole of British India;
	The rest of this Act extends to the territories for the time being respectively administered by the Lieutenant-Governors of the North-Western Provinces and the Punjab and the Chief Commissioners of Oudh, the Central Provinces and Ajmere and Merwara, to the Province of Sindh, to the Districts of the Patna Division, and to British territory under the jurisdiction of the Agent to the Governor General in Central India,
Power to extend Act	and any portion of this Act, other than the portions specified in the second paragraph of this section, may be extended <sup>1</sup> , by order of the Governor General in Council published in the Gazette of India, to any part of British India other than the territories, Province and Districts mentioned in the third paragraph of this section
Repeal of enactments	2. The enactments specified in the schedule hereto annexed are repealed to the extent mentioned in the third column thereof; but all rules made, licenses and passes granted, prices and duties fixed, notifications published and powers conferred under any such enactment and now in force shall, so far as they are consistent with this Act, be deemed to have been respectively made, granted, fixed, published and conferred hereunder.
Interpreta- tion-clause	3. In this Act, unless there be something repugnant in the subject or context,—
“the said territories”	the expression “the said territories” means the territories to which the section of this Act, in which that expression occurs, for the time being extends,
“Assistant Commis- sioner”	“Assistant Commissioner” means an Assistant Commissioner of Northern India Salt-revenue, and also includes any person invested by the Local Government with the powers of an Assistant Commissioner under this Act;
“Salt-rev- enue-officer”	“Salt-revenue-officer” means any officer of the Northern India Salt

<sup>1</sup> Under this power—

(1) the Act with certain exceptions has been extended to the Districts of the Oussa Division, *see* Notification No 769, dated 11th February, 1888, Gazette of India, 1888, Pt I, p 67;

(2) s 6 has been extended to Lower Burma, *see* Burma Rules Manual, Ed 1897, p 182

(Chapter I—*Preliminary. Secs. 4-5 Chapter II—Manufacture and Refining of Salt and Saltpetre. Sec. 6.*)

Department, and also includes any person invested<sup>1</sup> by the Local Government with any of the powers of a Salt-revenue-officer under this Act;

“Saltpetre” includes rasi, sajjī and all other substances manufactured from saline earth, and khārínún and every form of sulphate or carbonate of soda; and

“manufacture of salt” includes the separation or purification of salt obtained in the manufacture of saltpetre, the separation of salt from earth or other substance so as to produce alimentary salt, and the excavation or removal of natural saline deposits or efflorescence.

<sup>2</sup> “Kohat salt” means salt produced in the district of Kohat in the Punjab

4. The powers and duties conferred and imposed by this Act on a Commissioner of a Division may, in places where there is no such Commissioner, be exercised and performed by such officer as the Governor General in Council may from time to time appoint in this behalf

5. At the head of the administration of the salt-revenue under this Act there shall be an officer, called the Commissioner of Northern India Salt-revenue, who shall be appointed, and may be suspended or removed, by the Governor General in Council.

## CHAPTER II

### MANUFACTURE AND REFINING OF SALT AND SALTPETRE

6. The Governor General in Council may, from time to time, by rule—

- (a) prohibit absolutely, or subject to such conditions as he thinks fit, the manufacture of salt, or the manufacture or refining of saltpetre, throughout the whole or any portion of the said territories,
- (b) fix fees for the following licenses, not exceeding in the case of each such license the amount hereinafter mentioned.—

	Rs.
License to manufacture and refine saltpetre and to separate and purify salt in the process of such manufacture and refining .	50
License to manufacture saltpetre . . . . .	2
License to manufacture sulphate of soda ( <i>khārínún</i> ) by solar heat in evaporating pans . . . . .	10
License to manufacture sulphate of soda ( <i>khārínún</i> ) by artificial heat	2
License to manufacture other saline substances . . . . .	2

- (c) determine the manner, time and place in and at which, and the

Power of Governor General in Council—to regulate manufacture and refining of salt and saltpetre ; to fix fees for licenses ;

to regulate

<sup>1</sup> Police-officers in the North-Western Provinces and Oudh have been invested with the powers of a Salt-revenue-officer, see North-Western Provinces and Oudh List of Local Rules and Orders, Ed 1894, p 110

<sup>2</sup> This definition of “Kohat salt” in s 3 was added by the Indian Salt Act (1882) Amendment Act, 1890 (XIX of 1890), s. 1, printed, General Acts, Vol V.

*(Chapter III.—Duty and Price of Salt. Secs. 7-8.)*

the collection  
of duties ;

to regulate  
possession  
of salt in  
vicinity of  
places where  
saltpetre is  
manufac-  
tured ,

to regulate  
possession  
of salt in  
vicinity of  
places where  
salt is manu-  
factured

persons by whom, any duty imposed hereunder shall be collected in the said territories<sup>1</sup> ;

(d) define an area no point in which shall be more than one hundred yards from the nearest point of any place in which salt is stored or sold by or on behalf of Government, or of any manufactory and its appurtenances in or on which saltpetre is manufactured or refined, and regulate the possession, storage and sale of salt within such area ,

(e) define an area round any other place in which salt is manufactured, and regulate the possession, storage and sale of salt within such area

## CHAPTER III

## DUTY AND PRICE OF SALT

Power of  
Governor  
General in  
Council—  
to impose a  
duty on  
manufacture  
of salt ;  
to reduce or  
remit duties ;

7. The Governor General in Council may from time to time, by rule consistent with this Act,—

<sup>2</sup> (a) impose a duty, not exceeding three rupees per maund of 82½ pounds avoirdupois, on salt manufactured in, or imported by land into, any part of British India ,

<sup>3</sup> (b) reduce or remit any duty so imposed, and re-impose any duty so reduced or remitted ;

(c) fix the minimum price at which salt excavated, manufactured or sold by or on behalf of the Government of India shall be sold.

to fix mini-  
mum price  
of salt ex-  
cavated, etc ,  
by Govern-  
ment

In calculating the amount of duty payable under this section, fractions of quarter maunds may be reckoned as quarter maunds

Power of  
Local Gov-  
ernment to  
fix minimum  
price of salt  
excavated,  
etc

8. Subject to any general rules or special orders which the Governor General in Council may from time to time make in this behalf, the Local Government may from time to time, by notification in the local official Gazette, fix the minimum price at which salt excavated, manufactured or sold by or on behalf of such Local Government shall be sold.<sup>4</sup>

<sup>1</sup> In Burma it has been directed that the duty leviable under s 7 shall be recovered as arrears of land-revenue, *see* Burma Rules Manual, Ed 1892, p 182

<sup>2</sup> For notification imposing a duty on salt manufactured in—

(1) the Kohat District, *see* Gazette of India, 1896, Pt I, p 454 ,

(2) or imported into British India except certain Punjab Districts, *see* Gazette of India, 1888, Pt I, p 31 ;

(3) the Kalabagh Mines west of the Indus, *see* Gazette of India, 1888, Pt I, p 48 ;

(3) the Kalabagh mines west of the Indus, *see* Gazette of India, 1888, Pt I, p 48 ;

(4) Upper Burma, exclusive of the Shan States, *see* Burma Rules Manual, Ed 1897, p 182 ,

(5) Aden, *see* Bombay List of Local Rules and Orders, Ed 1896, Vol I, p 396

<sup>3</sup> For notification remitting the duty imposed on refuse salt of the Punjab mines used for manufacture of glazed stoneware and pottery, *see* Gazette of India, 1893, Pt I, p 214

<sup>4</sup> For notifications fixing the price of salt at—

(1) Aden, *see* Bombay List of Local Rules and Orders, Vol I, Ed 1896, p 396 ;

(2) Tuticorin for export of Penang and Kattanguli in the Tinnevely Districts, *see* Madras List of Local Rules and Orders, Vol I, Ed 1898, p. 194.

(Chapter IIIA—Indus Preventive Line. Secs. 8A-8B Chapter IV.—  
Offences against the Salt-revenue. Sec. 9.)

CHAPTER IIIA<sup>1</sup>.

## INDUS PREVENTIVE LINE

8A. (1) The Governor General in Council may from time to time, by rule,—

Power to define zones and establish chains of posts.

- (a) define a zone of country not exceeding fifteen miles in breadth—
  - (i) along any portion of the river Indus and at such distance therefrom as he deems expedient, or
  - (ii) in any tract extending from that river to the western frontier of the Punjab,

(b) extend any such zone so as to include any ferry, or any portion of a railway, canal or navigable river entering the zone, or any place where goods are loaded or unloaded into wagons or boats for the purpose of entering or leaving the zone, and

(c) within such a zone establish a chain of posts extending along the zone.

(2) The establishment of a chain of posts under clause (c) of sub-section (1) shall be deemed to be a public purpose within the meaning of the Land-acquisition Act, 1870<sup>2</sup>

X of 1870

8B. When a zone has been defined and a chain of posts established under section 8A, the Governor General in Council may from time to time, by rule,—

Effect of defining a zone and establishing a chain of posts.

- (a) prohibit any person, except upon such conditions as may be prescribed in the rule, from having in his possession any Kohat salt within the limits of the zone, and,
- (b) so far as may be necessary for the prevention of the smuggling of Kohat salt across the chain of posts, control and regulate the passage of traffic across such chain, and provide for the searching of all persons and things crossing or being taken across such chain.

## CHAPTER IV

## OFFENCES AGAINST THE SALT-REVENUE.

9. Whoever commits any of the following offences (namely):—

penalties

- (a) does anything in contravention of this Act or of any rule made hereunder;

<sup>1</sup> Ch IIIA was inserted by the Indian Salt Act Amendment Act, 1890 (XIX of 1890), s. 2, printed, General Acts, Vol V, p 472

<sup>2</sup> See now the Land Acquisition Act, 1894 (I of 1894), printed, General Acts, Vol VI. VOL. IV. Q

## (Chapter IV—Offences against the Salt-revenue Secs 10-12)

(b) evades payment of any duty or charge payable under this Act or any such rule; or

(c) attempts to commit, or abets within the meaning of the Indian Penal Code<sup>1</sup> the commission of any of the offences mentioned in clauses (a) and (b) of this section,

shall, for every such offence, be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with both;

and the convicting Magistrate, on the application of the Assistant Commissioner or Salt-revenue-officer, may declare to be confiscated all works, materials and implements constructed or prepared for the purpose of manufacturing or refining salt or saltpetre contrary to the provisions of this Act or any such rule

Punishment  
on second  
and subse-  
quent con-  
victions

10. Any person convicted of an offence under section 9, after having been previously convicted of an offence under that section or section 11 of the Inland Customs Act, 1875,<sup>2</sup> or under any enactment repealed by that Act, shall be punished with imprisonment for a term which may extend to six months, in addition to the punishment which may be inflicted for a first offence under section 9, VIII of 1875.

and every such person shall, upon every subsequent conviction of an offence under section 9, be liable to imprisonment for a term which may extend to six months, in addition to any term of imprisonment to which he was liable at his last previous conviction

Charge by  
whom to be  
preferred

11. A charge of an offence under section 9, or under section 11 of the Inland Customs Act, 1875,<sup>3</sup> shall not be entertained except on the complaint of an Assistant Commissioner or other Salt-revenue-officer not inferior in rank to a Sub-Inspector, VIII of 1875.

Limitation

and no such complaint shall be admitted unless it is preferred within six months after the commission of the offence to which it refers.

Jurisdiction.

All such offences shall be tried by a Magistrate exercising powers not less than those of a Magistrate of the second class.

Confiscation  
of articles  
in respect of  
which offence  
committed

12. All salt or saltpetre in respect of which any offence mentioned in section 9 has been committed, together with the vessels, packages or coverings in which such salt or saltpetre is contained, and the animals and conveyances used in carrying it, shall be liable to confiscation.

When the article seized exceeds five seers in weight, the Commissioner of the Division in which the seizure takes place may, if satisfied on the

<sup>1</sup> Printed, General Acts, Vol I, Ed 1898, p 240

<sup>2</sup> Act VIII of 1875 is repealed by this Act, see Sch, *infra*, p 233

<sup>3</sup> The words and figures in italics are now spent, see the second clause of section 11.

(Chapter IV.—Offences against the Salt-revenue Secs. 13-14. Chapter V.—  
Powers of Stoppage, Search, Seizure and Arrest. Sec 15)

report of any Salt-revenue-officer, or on such enquiry as he thinks fit to make, that such offence has been committed, declare such article to be confiscated or impose such lesser penalty in lieu of confiscation as to him may seem fit.

If the article seized does not exceed five sers in weight, the Assistant Commissioner shall possess the same powers in regard to its disposal as by this section are conferred on the Commissioner of the Division in regard to quantities exceeding five sers, and may also confiscate any vessel, package or covering in which such article is contained.

Whenever such Commissioner declares under this section any article to be confiscated, he may also declare to be confiscated any vessel, package or covering in which such article is contained, and any animal or conveyance used in carrying it.

13. The Governor General in Council may, from time to time, by rule, direct that any Salt-revenue-officer, not inferior in rank to an Assistant Inspector, if satisfied in such manner as such rule may prescribe that any offence mentioned in section 9 has been committed in respect of any dutiable salt, shall, instead of making a complaint to a Magistrate, or instituting proceedings with a view to confiscation, impose as a penalty an additional duty on such salt not exceeding the duty leviable thereon under Chapter III of this Act.

Power to  
levy addition-  
al duty as  
penalty.

The imposition of every such penalty shall be at once reported, if the salt, in respect of which an offence has been committed, exceeds five sers in weight, to the Commissioner of the Division in which such penalty is imposed, and, if such salt does not exceed five sers in weight, to the Assistant Commissioner,

and shall require the sanction of the Commissioner or Assistant Commissioner, as the case may be, to whom it is so reported

14. Any zamíndár or other proprietor of land, and any agent of a zamíndár or proprietor of land, who wilfully connives at any offence mentioned in section 9, shall for every such offence be punishable by any Magistrate exercising powers not less than those of a Magistrate of the second class with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with both.

Punishment  
for conniv-  
ance at  
offences men-  
tioned in  
section 9.

#### CHAPTER V.

##### POWERS OF STOPPAGE, SEARCH, SEIZURE AND ARREST.

15. Any Salt-revenue-officer empowered in this behalf by the Local

Power to  
search places

(Chapter V.—Powers of Stoppage, Search, Seizure and Arrest. Secs. 16-18.)

where article  
is manufac-  
tured under  
license

Power to  
detain sus-  
pected person  
and to seize  
goods liable  
to confis-  
cation

Power to  
arrest

Procedure of  
officer having  
reason to  
believe un-  
lawful manu-  
facture

Power to  
enter and  
search

Government may at any time enter and search any place in which any article is manufactured or refined under a license granted under this Act or any rule made hereunder

16. Any Salt-revenue-officer may stop and detain any person whom he has reason to believe to be liable to punishment under this Act ;

and may seize any salt or saltpetre in respect of which there is reason to believe that any offence mentioned in section 9 has been committed, or that any duty is payable, together with the vessels, packages or coverings in which such salt or saltpetre is contained, and the animals or conveyances used in carrying it.

17. Any Salt-revenue-officer may arrest any person whom he has reason to believe to have committed any such offence as last aforesaid

18. Whenever any Salt-revenue-officer, not inferior in rank to a Sub-Inspector, has reason to believe that salt or saltpetre is being unlawfully manufactured, refined or stored in an unlicensed place,

such officer shall first record in writing (so far as may be practicable) (a) the name, residence and calling of the informant (if any); (b) the locality and description of the house, boat or place where the officer believes that the salt or saltpetre is being so manufactured, refined or stored; (c) the name of the person by or for whom the salt or saltpetre is so manufactured, refined or stored, and (d) the supposed quantity and description of the salt or saltpetre, with the grounds for believing the same to be unlawfully manufactured, refined or stored;

and may then summon in writing the officer in charge of the police-station within whose jurisdiction the house, boat or place to be searched is situate to attend him ;

and may then, after sunrise and before sunset (but always in the presence of an officer of Police not inferior in rank to a head constable), enter and search any house, boat or place in which there is reason to believe that salt or saltpetre is being so manufactured, refined or stored,

and, in case of resistance, may break open any door, and force and remove any other obstacle to such entry ;

and may seize and carry away all salt and saltpetre so manufactured, refined or stored, and all materials used in the manufacture or refinement of such salt or saltpetre

and may also detain and search and, if he thinks proper, arrest the occupier of the said house, boat or place, together with all persons concerned in the manufacture, refinement or storing of such salt or saltpetre, or in the concealing thereof.

(Chapter V.—Powers of Stoppage, Search, Seizure and Arrest. Secs 19-21.)

If the place so entered is an apartment in the actual occupancy of a woman who, according to the custom of the country, does not appear in public, the officer entering the same shall be guided by the rules prescribed for such cases in the Code of Criminal Procedure<sup>1</sup>

Before conducting a search under this section, the officer conducting it shall call upon two or more respectable inhabitants (if any) of the locality in which the house, boat or place is situate to attend and witness the search, and the search shall be made in the presence of such inhabitants (if any), and also (if practicable) of the occupant of the house, boat or place searched<sup>2</sup>

Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency<sup>3</sup>

19. Any officer in charge of a police-station who, on application in writing made by a Salt-revenue-officer to attend for any of the purposes specified in section 18, refuses or fails within a reasonable time so to attend or to depute a subordinate officer, not inferior in rank to a head constable, so to attend, shall for every such offence be punished with fine which may extend to five hundred rupees.

Failure of  
Police-officer  
to attend.

20. Whenever a Salt-revenue-officer under the rank of Assistant Commissioner arrests under this Act any person,

or seizes any article as liable to confiscation under this Act,

or enters any house, boat or place for the purpose of searching for any such article,

Report of  
arrest seiz-  
ure and  
search.

he shall (unless generally empowered by the Assistant Commissioner to send the person arrested to the Magistrate) within forty-eight hours next after such arrest, seizure or entry make a full report of all the particulars of such arrest, seizure or entry to his official superior, for the information of the Assistant Commissioner.

Every officer making any arrest under this Act, or his official superior, shall, if generally empowered in this behalf by the Assistant Commissioner, either send with all convenient despatch the person arrested to the Magistrate having jurisdiction to deal with the case, or order the discharge of such person.

Every officer of Police attending any search made under section 18 shall report the same to his official superior.

21. Whenever the Assistant Commissioner is informed of the seizure of any article exceeding five sers in weight as liable to confiscation under

Procedure  
in respect

<sup>1</sup> See now the proviso to s 48 of the Code of Criminal Procedure, 1898 (Act V of 1898).

<sup>2</sup> Cf s 103 of Act V of 1898

<sup>3</sup> Cf s 52 of Act V of 1898

(Chapter V.—Powers of Stoppage, Search, Seizure and Arrest. Secs 22-24.)

of articles  
seized

this Act, he shall, with all convenient despatch, report the circumstances of the case to the Commissioner of the Division in which such seizure is made, who may thereupon proceed under section 12

If the articles seized does not exceed five seis in weight, such Assistant Commissioner may dispose of the case himself under the said section.

Procedure  
on detention  
of article  
subject to  
additional  
duty

**22.** Any article in respect of which a penalty is imposed under section 13 may be detained pending the receipt of the order of the Commissioner of the Division or the Assistant Commissioner, as the case may be, on the report required by the same section :

Provided that, if the owner of any article so detained deposits the amount of such penalty with, and pays all ordinary duty and charges payable on, such article to the Salt-revenue-officer detaining the same, such article shall be at once released.

When an article is so detained it shall on the receipt of the said order be dealt with in accordance with the rules made in this behalf hereunder.

When an article has been released under the second paragraph of this section, and the Commissioner of the Division or Assistant Commissioner, as the case may be, reduces or declines to sanction the penalty imposed in respect of such article, the amount refundable to the owner shall be paid to him on his applying therefor to the Assistant Commissioner within six months, to be computed (where the order has been made by the Commissioner of the Division) from the day on which the Assistant Commissioner has received such order, and (where the order has been made by the Assistant Commissioner) from the date of such order.

When any penalty, the amount of which has been deposited under the second clause of this section, is sanctioned,

or when any sum refundable under this section has not been claimed within the said period of six months,

the amount so in deposit, or the sum so refundable, shall be forfeited to Her Majesty, unless the Commissioner of Northern India Salt-revenue otherwise directs.

Procedure in  
respect of  
person arrest-  
ed

**23.** Whenever the Assistant Commissioner is informed of the arrest of any person, he shall (unless such person has been dealt with under the penultimate paragraph of section 20) either send with all convenient despatch the person arrested to the Magistrate having jurisdiction to deal with the case, or order the immediate discharge of such person.

Officers  
required to  
assist Salt-  
revenue  
officers.

**24.** All officers of Police, and all officers of Government engaged in the collection of land-revenue, are hereby empowered and required to assist the Salt-revenue-officers in the execution of this Act.

25. Any Salt-revenue-officer who—

- (a) without reasonable ground of suspicion searches or causes to be searched any house, boat or place ;
- (b) vexatiously and unnecessarily detains, searches or arrests any person ;
- (c) vexatiously and unnecessarily seizes the moveable property of any person, on pretence of seizing or searching for any article liable to confiscation under this Act ;
- (d) commits as such officer any other act to the injury of any person, when such officer has not reason to believe that such act is required for the execution of his duty,

Vexatious search, seizure, etc., by Salt-revenue-officer.

shall for every such offence be punishable, by a Magistrate exercising powers not less than those of a Magistrate of the second class, with fine which may extend to five hundred rupees.

Any person wilfully and maliciously giving false information and so causing a search to be made under this Act shall be punishable, by a Magistrate exercising the same powers, with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to two years, or with both

<sup>1</sup>[A Salt-revenue-officer shall not be deemed to search or detain any person, or to seize the moveable property of any person, vexatiously and unnecessarily within the meaning of clause (b) or clause (c) of the first paragraph of this section if the search is authorised by any rule under clause (b) of section 8B, and the detention or seizure is such as is necessary for the purposes of such search ]

26. The Governor General in Council may from time to time make rules consistent with this Act to regulate the seizure, disposal and destruction of things liable to be seized under this Act.

Power to regulate seizures and disposal of things seized

Such rules may, among other matters, provide—

- (a) that the owner or person having the charge of any animal seized and detained shall provide from day to day for its keep while detained, and that, if he omits to do so, such animal may be sold by public auction, and the expenses (if any) incurred on account of it defrayed from the proceeds of the sale ;
- (b) that when anything is seized and an order for its release is subsequently passed, and the owner does not, within a period to be fixed by such rules, appear to claim such thing and tender the

<sup>1</sup> This paragraph was added to s 25 by the Indian Salt Act Amendment Act, 1890 (XIX of 1890), s 3, printed, General Acts, Vol V, p 472

## (Chapter VI—Miscellaneous Secs 27-30)

duty, penalties and charges (if any) due in respect thereof, it may be sold by public auction, and such duty, penalties and charges defrayed from the proceeds of the sale,

- (c) that the surplus-proceeds of a sale under clause (a) or clause (b) of this section shall, unless the owner of the thing seized establishes his claim to such proceeds within a period, not less than three months, to be fixed by such rules, be forfeited to Her Majesty.

## CHAPTER VI.

## MISCELLANEOUS.

Power to prohibit import and transit of salt.

27. The Governor General in Council may, from time to time, by rule, prohibit absolutely, or subject to conditions, the importation of salt into, or the transit of salt over, the said territories or any part thereof

Except in the case of a prohibition under this section, nothing in this Act shall affect the transit of salt into or from any of the said territories, from or into any other part of British India

<sup>1</sup> [Nothing in this section shall be deemed to affect Chapter IIIA of this Act or any rule under that Chapter ]

Further matters for which Governor General in Council may make rules

28. In addition to the rules which the Governor General in Council is hereinbefore empowered to make, he may from time to time make rules consistent with this Act to regulate the following matters, namely:—

- (a) the persons by whom, and the time, place and manner at or in which, anything to be done under this Act shall be done,
  - (b) the cases in which and the officers to whom, and the conditions subject to which, orders given by Salt-revenue-officers under this Act shall be appealable,
  - (c) the fee to be charged on account of any license, pass, certificate, dākhlá, rawána or other such document issued under this Act;
- <sup>2</sup> and generally to carry out the provisions herein contained

Publication of rules

29. All rules made under this Act shall be published in the Gazette of India, and shall thereupon have the force of law

Power to confer powers of Assistant

30. Subject to the provisions herein contained, and to any rules for the time being in force made by the Governor General in Council, the Local

<sup>1</sup> This paragraph was added to s 27 by the Indian Salt Act Amendment Act, 1890 (XIX of 1890), s 4, printed, General Acts, Vol V, p 472

<sup>2</sup> For rules as to through booking of salt made under this section, see Gazette of India, 1889, Pt I, p 422, 1890, Pt I, p 211, 1892, Pt I, p 426 For rules as to the manufacture of salt under license, see Gazette of India, 1884, Pt I, p 246

As to rules for the Orissa Division of the Presidency of Madras, see Madras List of Local Rules and Orders, Ed 1898, Vol I, p 194

(Schedule—Enactments repealed.)

Government or the Commissioner of the Northern India Salt-revenue may invest any person with the powers of an Assistant Commissioner under this Act, or with all or any of the powers hereinbefore conferred on Salt-revenue-officers.

Commissioner and Salt-revenue-officers.

31 *Amendment of Madras Act VI of 1871* [Rep by the Indian Salt Act Amendment Act, 1890 (XIX of 1890), s. 5]

## SCHEDULE.

(See section 2)

## ENACTMENTS REPEALED.

*Acts of the Governor General in Council.*

Number and year	Short title	Extent of repeal.
VIII of 1875	The Inland Customs Act, 1875	The whole.
II of 1876	The Burma Land and Revenue Act, 1876	Section 39, clause (b), and in clause (c) of the same section the words and letter "under clause (b)"
XVIII of 1877	The Salt Act, 1877	The whole.

*Regulation.*

Number and year.	Short title	Extent of repeal
III of 1877	The Ajmere Laws Regulation, 1877	Sections 36 and 37

*Act of the Lieutenant-Governor of Bengal in Council.*

Number and year.	Short title	Extent of repeal.
VII of 1864	The Salt Act, 1864	Section 9.

## THE CODE OF CIVIL PROCEDURE.

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### CONTENTS.

---

#### PREAMBLE

#### PRELIMINARY.

#### SECTIONS.

1. Short title  
Commencement  
Local extent.
2. Interpretation-clause
3. Enactments repealed  
References in previous Acts.  
Saving of procedure in suits instituted before 1st June, 1882.  
Appeals pending on 29th July, 1879
4. Saving of certain Acts affecting Central Provinces, Burma, Punjab and Oudh.
- 4A. Power to modify the Code in its application to Revenue Courts.
5. Sections extending to Provincial Small Cause Courts.
6. Saving of jurisdiction and procedure—
  - (a) [*Rep by Act XIII of 1889, section 2 (1) and schedule.*]
  - (b) [*Rep by Act VIII of 1887, section 2, and schedule*]
  - (c) of Village Munsifs and Village Pancháyats in Madras;
  - (d) of Recorder of Rangoon sitting as Insolvent Court
7. Saving of certain Bombay laws
8. Presidency Small Cause Courts
9. Division of Code.

---

## PART I.

### OF SUITS IN GENERAL.

---

#### CHAPTER I

##### OF THE JURISDICTION OF THE COURTS AND *Res Judicata*.

10. No person exempt from jurisdiction by reason of descent or place of birth.
11. Courts to try all civil suits unless specially barred.
12. Pending suits
13. *Res judicata*.
14. When foreign judgment no bar to suit in British India.

## CHAPTER II.

### OF THE PLACE OF SUING.

## SECTIONS.

- 15 Court in which suit to be instituted.
- 16 Suits to be instituted where subject-matter situate
- 16A. Place for institution of suit where local limits of jurisdiction of Court are uncertain
- 17 Suits to be instituted where defendants reside or cause of action arose
- 18 Suits for compensation for wrongs to person or moveables
- 19 Suits for immoveable property situate in single district, but within jurisdictions of different Courts.
- Suits for immoveable property situate in different districts
- 20 Power to stay proceedings where all defendants do not reside within jurisdiction.
- Application when to be made.
- 21 Remission of court-fee where suit instituted in another Court
- 22 Procedure where Courts in which suit may be instituted subordinate to same Appellate Court.
- 23 Procedure where they are not so subordinate
- 24 Procedure where they are subordinate to different High Courts.
- 25. Transfer of suits.

---

## CHAPTER III.

### OF PARTIES AND THEIR APPEARANCES, APPLICATIONS AND ACTS.

- 26 Persons who may be joined as plaintiffs.
- 27 Court may substitute or add plaintiff for or to plaintiff suing
- 28 Persons who may be joined as defendants.
- 29 Joinder of parties liable on same contract.
- 30 One party may sue or defend on behalf of all in same interest.
- 31 Suit not to fail by reason of misjoinder.
- 32 Court may dismiss or add parties
- Consent of person added as plaintiff or next friend.
- Parties to suits instituted or defended under section 30.
- Defendants added to be served
- Conduct of suit
- 33 Where defendant added, plaint to be amended.
- 34 Time for taking objections as to non-joinder or misjoinder.
- 35. Each of several plaintiffs or defendants may authorise any other to appear, etc., for him
- Authority to be in writing signed and filed.

#### *Recognised Agents and Pleaders.*

- 36. Appearances, etc, may be in person, by recognised agent or by pleader.
- 37. Recognized agents
- Persons holding powers-of-attorney from parties out of jurisdiction.

## SECTIONS.

- Certificated mukhtárs
- Persons carrying on trade or business for parties out of jurisdiction.
- Recognized agents in Punjab, Oudh and Central Provinces
- 38 Service of process on recognized agent
- 39 Appointment of pleader
- 40 Service of process on pleader.
- 41 Agent to receive process
- His appointment to be in writing and to be filed in Court

## CHAPTER IV

## OF THE FRAME OF THE SUIT

- 42 Suit how to be framed.
- 43 Suit to include whole claim
- Relinquishment of part of claim
- Omission to sue for one of several remedies
- 44 Only certain claims to be joined with suit for recovery of land.
- Claims by or against executor, administrator or heir
- 45 Plaintiff may join several causes of action
- Court may order separation
- 46 Defendant may apply to confine suit
- 47. Court on hearing application may exclude some causes and order amendment.

## CHAPTER V

## OF THE INSTITUTION OF SUITS

- 48 Suits to be commenced by plaintiff
- 49 Language of plaintiff
- 50 Particulars to be contained in plaintiff.
- In money-suits.
- Where plaintiff sues as representative.
- Defendant's interest and liability to be shewn
- Grounds of exemption from limitation-law
- 51 Plaints to be signed and verified
- 52. Contents of verification
- Verification to be signed
- 53 When plaintiff may be rejected, returned for amendment or amended.
- Proviso
- Attestation of amendment
- 54. When plaintiff shall be rejected.
- 55. Procedure on rejecting plaintiff
- 56. When rejection of plaintiff does not preclude presentation of fresh plaintiff.
- 57 When plaintiff shall be returned to be presented to proper Court.
- Procedure on returning plaintiff.

## SECTIONS.

- 58 Procedure on admitting plaint.
  - Concise statements
  - Register of suits.
- 59. Production of document on which plaintiff sues.
  - Delivery of document or copy.
  - List of other documents
- 60 Statement in case of documents not in his possession or power.
- 61 Suits on lost negotiable instruments.
- 62 Production of shop-book
  - Original entry to be marked and returned
- 63 Inadmissibility of document not produced when plaint filed.

---

CHAPTER VI

## OF THE ISSUE AND SERVICE OF SUMMONS.

*Issue of Summons.*

- 64 Summons.
- 65 Copy or statement annexed to summons
- 66 Court may order defendant or plaintiff to appear in person
- 67 No party to be ordered to appear in person unless resident within fifty or, where there is railway, two hundred miles
- 68 Summons to be either to settle issues or for final disposal
- 69 Fixing day for appearance of defendant
- 70 Summons to order defendant to produce documents required by plaintiff or relied on by defendant
- 71 On issue of summons for final disposal, defendant to be directed to produce his witness.

*Service of Summons*

- 72 Delivery or transmission of summons for service.
- 73 Mode of service.
- 74 Service on several defendants
- 75 Service to be on defendant in person, when practicable, or on his agent.
- 76 Service on agent by whom defendant carries on business
- 77 Service on agent in charge, in suits for immoveable property
- 78 When service may be on male member of defendant's family.
- 79 Person served to sign acknowledgment.
- 80 Procedure when defendant refuses to accept service or cannot be found.
- 81 Endorsement of time and manner of service.
- 82 Examination of serving officer.
  - Substituted service
- 83 Effect of substituted service.
- 84. When service substituted, time for appearance to be fixed.
- 85. Service of summons when defendant resides within jurisdiction of another Court and has no agent to accept service.
- 86. Service within Presidency-towns and Rangoon of process issued by, Provincial Courts.

## SECTIONS.

- 87. Service on defendant in jail.
- 88. Procedure if jail be in different district.
- 89. Service when defendant resides out of British India and has no agent to accept service
- 90. Service in foreign territory through British Resident or Court.
- 91. Substitution of letter for summons.
- 92. Mode of sending such letter.

*Service of Process.*

- 93. Process to be served at expense of party issuing.  
Costs of service
- 94. Notices and orders in writing how served.

*Postage.*

- 95. Postage

## CHAPTER VII

## OF THE APPEARANCE OF THE PARTIES AND CONSEQUENCE OF NON-APPEARANCE.

- 96. Parties to appear on day fixed in summons for defendant to appear and answer
- 97. Dismissal of suit where summons not served in consequence of plaintiff's failure to pay fee for issuing  
Proviso.
- 98. If neither party appears, suit to be dismissed.
- 99. In such case plaintiff may bring fresh suit, or Court may restore suit to its file.
- 99A. Dismissal of suit where plaintiff, after summons returned unserved, fails for a year to apply for fresh summons.
- 100. Procedure if only plaintiff appears—  
when summons duly served,  
when summons not duly served,  
when summons served, but not in due time.
- 101. Procedure where defendant appears on day of adjourned hearing, and assigns good cause for previous non-appearance.
- 102. Procedure where defendant only appears.
- 103. Decree against plaintiff by default bars fresh suit
- 104. Procedure where defendant residing out of British India does not appear.
- 105. Procedure in case of non-attendance of one or more of several plaintiffs.
- 106. Procedure in case of non-attendance of one or more of several defendants.
- 107. Consequence of non-attendance, without sufficient cause shown,  
of party ordered to appear in person

*Of Setting aside Decrees ex parte.*

- 108. Setting aside decree *ex parte* against defendant.

## SECTIONS.

109. No decree to be set aside without notice to opposite party.
- 

## CHAPTER VIII.

## OF WRITTEN STATEMENTS AND SET-OFF

110. Written statements  
111. Particulars of set-off to be given in written statement  
Inquiry  
Effect of set-off  
112. No written statement to be received after first hearing.  
Provisos  
113. Procedure when party fails to present written statement called for  
by Court.  
114. Frame of written statements  
115. Written statements to be signed and verified.  
116. Power of Court as to argumentative, prolix or irrelevant written  
statements.  
Attestation of amendments  
Effect of rejection.
- 

## CHAPTER IX.

## OF THE EXAMINATION OF THE PARTIES BY THE COURT.

117. Ascertainment whether allegations in plaint and written statements  
admitted or denied.  
118. Oral examination of party, or companion of himself or his pleader.  
119. Substance of examination to be written.  
120. Consequence of refusal or inability of pleader to answer.
- 

## CHAPTER X.

OF DISCOVERY AND OF THE ADMISSION, INSPECTION, PRODUCTION,  
IMPOUNDING AND RETURN OF DOCUMENTS

121. Power to deliver interrogatories.  
122. Service of interrogatories.  
123. Inquiry into propriety of exhibiting interrogatories.  
124. Service of interrogatories on officer of Corporation or Company.  
125. Power to refuse to answer interrogatories as irrelevant, etc  
126. Time for filing affidavit in answer  
127. Procedure where party omits to answer sufficiently.  
128. Power to demand admission of genuineness of documents.  
129. Power to order discovery of document.  
Affidavit in answer to such order.  
130. Power to order production of documents during suit.  
131. Notice to produce for inspection documents referred to in plaint,  
etc.  
Consequence of non-compliance with such notice.

## SECTIONS.

- 132 Party receiving such notice to deliver notice when and where inspection may be had
- 133 Application for order of inspection.
- 134 Application to be founded on affidavit
- 135 Power to order issue or question on which right to discovery depends to be first determined
- 136 Consequences of failure to answer or give inspection
- 137 Court may send for papers from its own records or from other Courts
- 138. Documentary evidence to be in readiness at first hearing
- 139 Effect of non-production of documents
- 140 Documents to be received by Court  
Rejection of irrelevant or inadmissible documents.
- 141 Endorsements on documents admitted in evidence
- 141A Endorsements on copies of admitted entries in books, accounts and records
- 142 Endorsements on documents rejected as inadmissible in evidence
- 142A Recording of admitted and return of rejected documents
- 143 Court may order any document to be impounded
- 144 When document admitted in evidence may be returned  
When document may be returned before time limited  
Certain documents not to be returned  
Receipt to be given for returned document
- 145 Provisions as to documents applied to material objects

## CHAPTER XI.

## OF THE SETTLEMENT OF ISSUES.

- 146 Framing of issues
- 147. Allegations from which issues may be framed
- 148 Court may examine witnesses or documents before framing issues.
- 149 Power to amend, add and strike out issues
- 150 Questions of fact or law may by agreement be stated in form of issues
- 151 Court, if satisfied that agreement was executed in good faith, may pronounce judgment.

## CHAPTER XII.

## DISPOSAL OF THE SUIT AT THE FIRST HEARING.

- 152 If parties not at issue on any question of law or fact
- 153 If one or several defendants be not at issue with plaintiff.
- 154. If parties at issue on questions of law or fact,  
Court may determine issue,  
and pronounce judgment
- 155 If either party fails to produce his evidence, Court may pronounce judgment or adjourn suit.

## CHAPTER XIII.

## OF ADJOURNMENTS.

## SECTIONS.

- 156. Court may grant time and adjourn hearing.  
Costs of adjournment.
  - 157. Procedure if parties fail to appear on day fixed
  - 158. Court may proceed notwithstanding either party fails to produce evidence, etc.
- 

## CHAPTER XIV.

## OF THE SUMMONING AND ATTENDANCE OF WITNESSES.

- 159. Summons to attend to give evidence or produce documents
  - 160. Expenses of witnesses to be paid into Court on applying for summons.  
Scale of expenses.
  - 161. Tender of expenses to witness.
  - 162. Procedure where insufficient sum paid in  
Expenses if witness detained more than one day
  - 163. Time, place and purpose of attendance to be specified in summons.
  - 164. Summons to produce document
  - 165. Power to require persons present in Court to give evidence
  - 166. Summons how served
  - 167. Time for serving summons.
  - 168. Attachment of property of absconding witness.
  - 169. If witness appears, attachment may be withdrawn.
  - 170. Procedure if witness fails to appear
  - 171. Court may of its own accord summon as witnesses strangers to suit.
  - 172. Duty of persons summoned to give evidence or produce document
  - 173. When they may depart
  - 174. Consequences of failure to comply with summon  
Procedure when witness apprehended cannot give evidence or produce documents
  - 175. Procedure when witness absconds
  - 176. Persons bound to attend in person.
  - 177. Consequence of refusal of party to give evidence when called on by Court.
  - 178. Rules as to witnesses to apply to parties summoned
- 

## CHAPTER XV.

## OF THE HEARING OF THE SUIT AND EXAMINATION OF WITNESSES.

- 179. Statement and production of evidence by party having right to begin  
Rules as to right to begin.
- 180. Statement and production of evidence by other party.  
Reply by party beginning.

## SECTIONS

- 181 Witnesses to be examined in open Court
- 182 How evidence shall be taken in appealable cases
- 183 When deposition to be interpreted
- 184 Memorandum when evidence not taken down by Judge
- 185 When evidence may be taken in English
- 185A Power for Local Government to require evidence to be recorded in English.
- 186 Any particular question and answer may be taken down.
- 187 Questions objected to and allowed by Court.
- 188 Remarks on demeanour of witnesses
- 189 Memorandum of evidence in unappealable cases
- 190 Judge unable to make such memorandum to record reason of his inability
- 191 Power to deal with evidence taken down by another Judge
- 192 Power to examine witness immediately
- 193 Court may recall and examine witness

---

CHAPTER XVI

## OF AFFIDAVITS

- 194 Power to order any point to be proved by affidavit
- 195 Power to order attendance of declarant for cross-examination.
- 196 Matters to which affidavits shall be confined
- 197 Oath of declarant by whom to be administered

---

CHAPTER XVII.

## OF JUDGMENT AND DECREE.

- 198 Judgment when pronounced
- 199. Power to pronounce judgment written by Judge's predecessor.
- 200 Language of judgment.
- 201. Translation of judgment.
- 202 Judgment to be dated and signed.
- 203 Judgment of Small Cause Courts.  
Judgments of other Courts
- 204 Court to state its decision on each issue.  
Exception.
- 205 Date of decree
- 206. Contents of decree.  
Power to amend decree.
- 207 Decree for recovery of immoveable property
- 208 Decree for delivery of moveable property
- 209. Decrees for the payment of money may order certain interest to be paid on principal sum adjudged
- 210 Decree may direct payment by instalments.  
Order, after decree, for payment by instalments.
- 211. In suits for land Court may decree payment of mesne profits with interest.

## SECTIONS.

- 212. Court may determine amount of mesne profits prior to suit, or may reserve inquiry
- 213 Administration-suit
- 214. Suit to enforce right of pre-emption.
- 215. Suit for dissolution of partnership
- 215A Suit for account between principal and agent.
- 216. Decree when set-off is allowed  
Effect of decree as to sum awarded to defendant.
- 217. Certified copies of judgment and decree to be furnished.

## CHAPTER XVIII.

## OF COSTS.

- 218 Costs of applications
- 219. Judgment to direct by whom costs to be paid.
- 220 Power of Court as to costs
- 221 Costs may be set off against sum admitted or found to be due.
- 222 Interest on costs  
Payment of costs out of subject-matter

## CHAPTER XIX.

## OF THE EXECUTION OF DECREES.

*A—Of the Court by which Decrees may be executed.*

- 223. Court by which decree may be executed.
- 224 Procedure when Court desires that its own decree shall be executed by another Court
- 225. Court receiving copies of decree, etc., to file same without proof.
- 226 Execution of decree or order by Court to which it is sent.
- 227 Execution by High Court of decree transmitted by other Court.
- 228 Powers of Court in executing transmitted decree.  
Appeal from orders in executing such decrees
- 229. Decrees of Courts established by Government of India in Native States.
- 229A. Sending of decrees of British Indian Courts to British Courts in Native States
- 229B. Execution in British India of decrees of Courts of Native States.

*B.—Of Application for Execution.*

- 230. Application for execution.
- 231. Application by joint decree-holder
- 232. Application by transferee of decree.
- 233. Transferee to hold subject to equities enforceable against original holder.
- 234 If judgment-debtor die before execution, application may be made against his representative.

## SECTIONS.

- 235. Contents of application for execution of decree
- 236. Application for attachment of moveable property to be accompanied with inventory
- 237. Further particulars when application is for attachment of immovable property.
- 238. When application must be accompanied by extract from Collector's register.

*C.—Of staying Execution.*

- 239. When Court may stay execution
- 240. Power to require security from, or impose conditions upon, judgment-debtor
- 241. Liability of judgment-debtor discharged to be retaken
- 242. Order of Court which passed decree or of Appellate Court to be binding upon Court applied to.
- 243. Stay of execution pending suit between decree-holder and judgment-debtor.

*D — Questions for Court executing Decree*

- 244. Questions to be decided by Court executing decree

*E.—Of the mode of executing Decrees.*

- 245 Procedure on receiving application for execution of decree
- 245A. Prohibition of arrest or imprisonment of women in execution of decrees for money.
- 245B Discretionary power to permit other judgment-debtors to show cause against imprisonment.
- Procedure on admitting application.
- 246. Cross-decrees.
- 247. Cross-claims under same decree.
- 248 Notice to show cause why decree should not be executed  
Proviso.
- 249. Procedure after issue of notice
- 250. Warrant when to issue.
- 251. Date, signature, seal and delivery.
- 252. Decree against representative of deceased for money to be paid out of deceased's property.
- 253 Decree against surety.
- 254. Decree for money
- 255. Decree for mesne profits or other matter amount of which to be subsequently ascertained.
- 256. Power to direct immediate execution of decree for money not exceeding one thousand rupees.
- 257. Modes of paying money under decree.
- 257A Agreement to give time to judgment-debtor.  
Agreement for satisfaction of judgment-debt.
- 258 Payment to decree-holder.

## SECTIONS.

- 259. Decrees for specific moveables, or recovery of wives
- 260 Decree for specific performance or restitution of conjugal rights.
- 261. Decree for execution of conveyances, or endorsement of negotiable instruments.
- 262 Form and effect of execution of conveyance by Court.
- 263 Decree for immoveable property.
- 264. Delivery of immoveable property when in occupancy of tenant.
- 265. Partition of estate or separation of share.

*F—Of Attachment of Property.*

- 266 Property liable to attachment and sale in execution of decree.
- 267. Power to summon and examine persons as to property liable to be seized
- 268. Attachment of debt, share and other property not in possession of judgment-debtor
- 269. Attachment of moveable property in possession of judgment-debtor
  - Proviso
  - Power to make rules for maintenance of attached live-stock.
- 270 Attachment of negotiable instruments.
- 271. Seizure of property in building.
  - Seizure of property in zanánás.
- 272. Attachment of property deposited in Court or with Government officer.
  - Proviso.
- 273. Attachment of decree for money.
  - Attachment of other decree
  - Decree-holders to give information.
- 274. Attachment of immoveable property.
- 275. Order for withdrawal of attachment after satisfaction of decree.
- 276. Private alienation of property after attachment to be void
- 277. Court may direct coin or currency-notes attached to be paid to party entitled.
- 278. Investigation of claims to, and objections to attachment of, attached property.
  - Postponement of sale.
- 279. Evidence to be adduced by claimant.
- 280. Release of property from attachment.
- 281. Disallowance of claim to release of property attached.
- 282. Continuance of attachment subject to claim of incumbrancer.
- 283. Saving of suits to establish right to attached property.
- 284. Power to order property attached to be sold, and proceeds to be paid to person entitled.
- 285. Property attached in execution of decrees of several Courts.

*G.—Of Sale and Delivery of Property.*

## (a) GENERAL RULES.

- 286. Sales by whom conducted and how made.

## SECTIONS

- 287 Proclamation of sales by public auction.  
Rules to be made by High Court
- 288 Indemnity of judges, etc.
- 289 Mode of making proclamation.
- 290 Time of sale
- 291. Power to adjourn sale  
Stoppage of sale on tender of debt and costs, or on proof of payment
- 292 Officers concerned in execution-sales not to bid for or buy property sold
- 293 Defaulting purchaser answerable for loss by re-sale
- 294 Decree-holder not to bid for or buy property without permission  
If decree-holder purchase, amount of decree may be taken as payment
- 295. Proceeds of execution-sale to be divided rateably among decree-holders  
Proviso where property is sold subject to mortgage.  
Proviso

## (b) RULES AS TO MOVEABLE PROPERTY.

- 296 Rules as to negotiable instruments and shares in public Companies.
- 297 Payment for other moveable property sold
- 298 Irregularity not to vitiate sale of moveable property, but any person injured may sue
- 299 Delivery of moveable property actually seized
- 300. Delivery of moveable property to which judgment-debtor entitled subject to lien
- 301. Delivery of debts and of shares in public Companies.
- 302 Transfer of negotiable instruments and shares
- 303. Vesting order in case of other property.

## (c) RULES AS TO IMMOVEABLE PROPERTY

- 304. What Courts may order sales of land
- 305. Postponement of sale of land to enable defendant to raise amount of decree.  
Certificate to judgment-debtor
- 306 Deposit by purchaser of immoveable property.
- 307. Time for payment in full.
- 308 Procedure in default of payment
- 309 Notification on re-sale of immoveable property.
- 310 Co-sharer of share of undivided estate sold in execution to have preference in bidding
- 310A. Application by judgment-debtor to set aside sale and deposit of debt
- 311. Application to set aside sale of land on ground of irregularity.
- 312. Effect of objection being disallowed, and of its being allowed.
- 313. Application to set aside sale on ground of judgment-debtor having no saleable interest.

## SECTIONS.

- 314. Confirmation of sale.
- 315 If sale set aside, price to be returned to purchaser.
- 316 Certificate to purchaser of immoveable property.
- 317. Bar to suit against purchaser buying benámí.
- 318. Delivery of immoveable property in occupancy of judgment-debtor.
- 319 Delivery of immoveable property in occupancy of tenant.
- 320. Power to prescribe rules for transferring to Collector execution of certain decrees  
Power to prescribe rules as to transmission, execution and re-transmission of decrees.
- 321. Power of Collector when execution of decree is so transferred.
- 322 Procedure of Collector when execution of decree is so transferred.
- 322A Notice to be given to decree-holders and to persons having claims on property.
- 322B. Amount of money-decrees to be ascertained, and immoveable property available for their satisfaction
- 322C. When District Court may issue notices and hold inquiry.
- 322D Effect of decision of Court as to dispute arising under section 322B or 322C
- 323 Scheme for liquidation of money-decrees.
- 324 Recovery of balance, if any, after letting or management.
- 324A. Collector to render accounts to Civil Court.  
Application of balance
- 325 Sales how to be conducted.
- 325A. Restrictions as to alienation by judgment-debtor or his representative, and prosecution of remedies by decree-holders
- 325B. Provision where property is in several districts.
- 325C Powers of Collector to compel attendance of parties and witnesses and production of documents.
- 326 When Court may authorize Collector to stay public sale of land
- 327 Local rules as to sales of land in execution of decrees for money.

*H—Of Resistance to Execution.*

- 328 Procedure in case of obstruction to execution of decree
- 329 Procedure in case of obstruction by judgment-debtor or at his instigation
- 330. Procedure when obstruction continues.
- 331. Procedure in case of obstruction by claimant in good faith, other than judgment-debtor
- 332. Procedure in case of person dispossessed of property disputing right of decree-holder to be put into possession
- 333 Transfer of property by judgment-debtor after institution of suit.
- 334. Resisting or obstructing purchaser in obtaining possession of immoveable property
- 335. Obstruction by claimant other than judgment-debtor.

*I.—Of Arrest and Imprisonment.*

- 336 Place of judgment-debtor's imprisonment.  
Proviso

## SECTIONS.

337. Warrant for arrest to direct judgment-debtor to be brought up.  
337A Proceedings on appearance of judgment-debtor in obedience to notice under section 245B, or after arrest in execution of decree for money  
338. Scales of subsistence-allowances.  
339. Judgment-debtor's subsistence-money.  
340. Subsistence money to be costs in suit.  
341. Release of judgment-debtor.  
342. Imprisonment not to exceed six months.  
When not to exceed six weeks.  
343. Endorsement on warrant.

---

CHAPTER XX.

## OF INSOLVENT JUDGMENT-DEBTORS.

344. Power to apply for declaration of insolvency  
345. Contents of application.  
346. Subscription and verification of application.  
347. Service of copy of application and notice  
348. Power to serve other creditors.  
349. Powers of Court as to judgment-debtor under arrest.  
350. Procedure at hearing  
351. Declaration of insolvency and appointment of Receiver.  
352. Creditors to prove their debts.  
Schedule to be framed.  
353. Applications by unscheduled creditors  
354. Effect of order appointing Receiver.  
355. Receiver to give security and collect assets.  
Discharge of insolvent.  
356. Duty of Receiver  
His right to remuneration.  
Delivery of surplus.  
357. Effect of discharge.  
358. Declaration that insolvent is discharged from liability.  
359. Procedure in case of dishonest applicant.  
360. Investment of other Courts with powers of District Courts.  
Transfer of cases.  
360A Inapplicability of this Chapter to Presidency-towns.

---

PART II.

## OF INCIDENTAL PROCEEDINGS.

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CHAPTER XXI.

## OF THE DEATH, MARRIAGE AND INSOLVENCY OF PARTIES.

361. No abatement by party's death, if right to sue survives.

## SECTIONS.

- 362. Procedure in case of death of one of several plaintiffs or defendants, if right to sue survives
- 363. Procedure where one of several plaintiffs dies and right to sue does not survive to surviving plaintiffs alone.
- 364. Procedure where no application made by representative of deceased plaintiff
- 365. Procedure in case of death of sole, or sole surviving, plaintiff.
- 366. Abatement where no application by representative of deceased plaintiff
- 367. Procedure in case of dispute as to representative of deceased plaintiff.
- 368. Procedure in case of death of one of several defendants, or of sole or sole surviving defendant.
- 369. Suit not abated by marriage of female party.
- 370. When plaintiff's bankruptcy or insolvency bars suit.  
Procedure when assignee fails to continue suit or give security.
- 371. Effect of abatement or dismissal  
Application to set aside abatement or dismissal.
- 372. Procedure in case of assignment pending suit
- 372A. Power for Court to extend period of limitation prescribed for certain applications.

---

#### CHAPTER XXII.

## OF THE WITHDRAWAL AND ADJUSTMENT OF SUITS.

- 373. Power to allow plaintiff to withdraw with liberty to bring fresh suit.
- 374. Limitation law not affected by first suit.
- 375. Compromise of suits
- 375A. Application for execution of decrees not affected.

---

#### CHAPTER XXIII.

## OF PAYMENT INTO COURT.

- 376. Deposit by defendant of amount in satisfaction of claim.
- 377. Notice of deposit.
- 378. Interest on deposit not allowed to plaintiff after notice.
- 379. Procedure where plaintiff accepts deposit as satisfaction in part.  
Procedure where he accepts it as satisfaction in full.

---

#### CHAPTER XXIV.

## OF REQUIRING SECURITY FOR COSTS.

- 380. When security for costs may be required from plaintiff at any stage of suit.

## SECTIONS.

- 381 Effect of failure to furnish security.
- 382. Residence out of British India

## CHAPTER XXV.

## OF COMMISSIONS.

*A — Commissions to examine Witnesses*

- 383 Cases in which Court may issue commission to examine witness
- 384 Order for commission.
- 385. When witness resides within Court's jurisdiction
- 386 Persons for whose examination commission may issue
- 387 Commission to examine witness not within British India
- 388. Court to examine witness pursuant to commission
- 389 Return of commission with depositions of witnesses
- 390 When depositions may be read in evidence
- 391. Provisions as to execution and return of commissions to apply to commissions issued by foreign Courts.

*B — Commissions for local Investigations*

- 392 Commission to make local investigations.
- 393. Procedure of Commissioner
- Report and depositions to be evidence in suit
- Commissioner may be examined in person

*C — Commissions to examine Accounts*

- 394 Commission to examine or adjust accounts
- 395 Court to give Commissioner necessary instructions
- Court to receive Commissioner's proceedings or direct further enquiry

*D — Commission to make Partition*

- 396. Commission to make partition of non-revenue-paying immoveable property
- Procedure of Commissioners

*E — General Provisions*

- 397 Expenses of commission to be paid into Court.
- 398 Powers of Commissioners
- 399 Attendance, examination and punishment of witnesses before Commissioner.
- 400 Court to direct parties to appear before Commissioner.
- Procedure *ex parte*.

## PART III.

## OF SUITS IN PARTICULAR CASES.

## CHAPTER XXVI.

## SUITS BY PAUPERS.

- 401. Suits may be brought *in formâ pauperis*.

## SECTIONS

- 402 What suits excepted.
  - 403. Application to be in writing.  
Contents of application
  - 404. Presentation of application.
  - 405 Rejection of application
  - 406. Examination of applicant.  
If presented by agent, Court may order applicant to be examined  
by commission.
  - 407 Rejection of application
  - 408. Notice of day for receiving evidence of applicant's pauperism.
  - 409. Procedure at hearing
  - 410 Procedure if application admitted.
  - 411. Costs when pauper succeeds.  
Recovery of court-fees
  - 412. Procedure when pauper fails
  - 413 Refusal to allow applicant to sue as pauper to bar subsequent  
application of like nature.
  - 414. Dispaupering
  - 415. Costs
- 

## CHAPTER XXVII.

## SUITS BY OR AGAINST GOVERNMENT OR PUBLIC OFFICERS

- 416 Suits by or against Secretary of State in Council.
  - 417 Persons authorized to act for Government.
  - 418. Plaints in suits by Secretary of State in Council.
  - 419 Agent of Government to receive process.
  - 420 Appearance and answer by Secretary of State in Council.
  - 421 Attendance of person able to answer questions relating to suit against  
Government.
  - 422 Service on public officers.
  - 423 Extension of time to enable officer to make reference to Govern-  
ment.
  - 424 Notice previous to suing Secretary of State in Council or public  
officer
  - 425 Arrests in such suits.
  - 426 Application where Government undertakes defence.
  - 427. Procedure where no such application made.  
Defendant not liable to arrest before judgment.
  - 428. Exemption of public officers from personal appearance.
  - 429. Procedure where decree against Government or public officer.
- 

## CHAPTER XXVIII.

## SUITS BY ALIENS AND BY OR AGAINST FOREIGN AND NATIVE RULERS.

- 430. When aliens may sue.
- 431. When foreign State may sue.

## SECTIONS

- 432 Persons specially appointed by Government to prosecute or defend  
for Princes or Chiefs
- 433 Suits against Princes, Chiefs, ambassadors and envoys.
- 434 Style of Princes and Chiefs as parties to suits.

## CHAPTER XXIX.

## SUITS BY AND AGAINST CORPORATIONS AND COMPANIES.

- 435 Subscription and verification of plaint.
- 436 Service on Corporation or Company

## CHAPTER XXX.

## SUITS BY AND AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS.

- 437. Representation of beneficiaries in suits concerning property vested  
in trustees, etc
- 438 Joinder of executors and administrators
- 439 Husband of married executrix not to join.

## CHAPTER XXXI

## SUITS BY AND AGAINST MINORS AND PERSONS OF UNSOUND MIND

- 440 Minor must sue by next friend.  
Costs
- 441 Applications to be made by next friend or guardian *ad litem*
- 442 Plaint filed without next friend to be taken off file  
Costs
- 443 Guardian *ad litem* to be appointed by Court
- 444 Order obtained without next friend or guardian may be discharged.  
Costs
- 445. Who may be next friend.
- 446. Removal of next friend
- 447. Retirement of next friend.  
Application for appointment of new next friend.
- 448 Stay of proceedings on death or removal of next friend.
- 449. Application for appointment of new next friend
- 450. Course to be followed by minor plaintiff or applicant on coming of  
age.
- 451. Where he elects to proceed.
- 452. Where he elects to abandon.  
Costs.
- 453. Making and proving applications under sections 451, 452.
- 454. When minor co-plaintiff coming of age desires to repudiate suit.  
Costs.
- 455. When suit unreasonable or improper.  
Costs.

## SECTIONS.

- 456 Petition for appointment of guardian *ad litem*.
- 457 Who may be guardian *ad litem*.
- 458. Guardian neglecting his duty may be removed.  
Costs.
- 459. Appointment in place of guardian dying *pendente lite*.
- 460. Guardian *ad litem* of minor representative of deceased judgment-debtor.
- 461. Receipt by next friend of guardian *ad litem* of property under decree for minor.
- 462. Next friend or guardian *ad litem* not to compromise without leave of Court.  
Compromise without leave voidable.
- 463 Application of sections 440 to 462 to persons of unsound mind.
- 464. Princes and Chiefs and wards of Court.

---

CHAPTER XXXII.

## SUITS BY AND AGAINST MILITARY MEN.

- 465. Officers or soldiers who cannot obtain leave may authorize any person to sue or defend for them
- 466. Person so authorized may act personally or appoint pleader
- 467. Service on person so authorized, or on his pleader, to be good service
- 468. Service on officers and soldiers
- 469 [*Execution of warrant of arrest in cantonments, etc.*] *Repealed by Act XIII of 1889.*

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CHAPTER XXXIII

## INTERPLEADER

- 470. When interpleader-suit may be instituted.
- 471. Plead in such suit.
- 472. Payment of thing claimed into Court.
- 473. Procedure at first hearing
- 474. When agents and tenants may institute interpleader-suits.
- 475. Charge of plaintiff's costs.
- 476. Procedure where defendant is suing stake-holder.  
Costs.

---

PART IV.

## PROVISIONAL REMEDIES.

---

CHAPTER XXXIV.

## OF ARREST AND ATTACHMENT BEFORE JUDGMENT.

*A.—Arrest before Judgment.*

- 477. When plaintiff may apply that security be taken.
- 478. Order to bring up defendant to show cause why he should not give security.

## SECTIONS.

- 479 If defendant fail to show cause, Court may order him to make deposit or give security
- 480 Procedure in case of application by surety to be discharged
- 481 Procedure where defendant fails to give security or find fresh security
- 482 Subsistence of defendants arrested

*B—Attachment before Judgment*

- 483. Application before judgment for security from defendant to satisfy decree, and in default for attachment of property  
Contents of application
- 484 Court may call on defendant to furnish security or show cause.
- 485 Attachment if cause not shown or security not furnished  
Withdrawal of attachment
- 486. Mode of making attachment
- 487 Investigation of claims to property attached before judgment
- 488 Removal of attachment when security furnished or suit dismissed
- 489. Attachment not to affect rights of strangers, or bar decree-holder from applying for sale
- 490 Property attached under Chapter not to be re-attached in execution of decree.

*C—Compensation for Improper Arrests or Attachments*

- 491 Compensation for obtaining arrest or attachment on insufficient grounds  
Proviso

## CHAPTER XXXV

## OF TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS.

*A—Temporary Injunctions.*

- 492 Cases in which temporary injunction may be granted
- 493. Injunction to restrain repetition or continuance of breach
- 494 Before granting injunction, Court to direct notice to opposite party.
- 495 Injunction to Corporation binding on its members and officers
- 496 Order for injunction may be discharged, varied or set aside
- 497 Compensation to defendant for issue of injunction on insufficient grounds.  
Proviso.

*B.—Interlocutory Order.*

- 498. Power to order interim sale of perishable articles
- 499. Power to make order for detention, etc., of subject-matter, and to authorize entry, taking of samples and experiments.
- 500. Application for such orders to be after notice
- 501. When party may be put in immediate possession of land the subject of suit.
- 502. Deposit of money, etc., in Court.

## CHAPTER XXXVI.

## APPOINTMENT OF RECEIVERS.

## SECTIONS

- 503. Power of Court to appoint Receivers  
Receiver's liabilities
- 504. When Collector may be appointed Receiver.
- 505. Course empowered under this Chapter.

---

**PART V.****OF SPECIAL PROCEEDINGS.**

---

## CHAPTER XXXVII.

## REFERENCE TO ARBITRATION.

- 506. Parties to suit may apply for order of reference.
- 507. Nomination of arbitrator  
When Court to nominate arbitrator.
- 508. Order of reference.
- 509. When reference is to two or more, order to provide for difference  
of opinion
- 510. Death, incapacity, etc., of arbitrators or umpire.
- 511. Appointment of umpire by Court.
- 512. Powers of arbitrator or umpire appointed under sections 509, 510,  
511.
- 513. Summoning witnesses  
Punishment for default, etc.
- 514. Extension of time for making award.  
Supersession of arbitration.
- 515. When umpire may arbitrate in lieu of arbitrators
- 516. Award to be signed and filed
- 517. Arbitrators or umpire may state special case
- 518. Court may, on application, modify or correct award in certain cases.
- 519. Order as to costs of arbitration.
- 520. When award or matter referred to arbitration may be remitted.
- 521. Grounds for setting aside award
- 522. Judgment to be according to award.  
Decree to follow.
- 523. Agreement to refer to arbitration may be filed in Court.  
Application to be numbered and registered.  
Notice to show cause against filing
- 524. Provisions of Chapter applicable to proceedings under order of  
reference.
- 525. Filing award in matter referred to arbitration without intervention  
of Court.  
Application to be numbered and registered.  
Notice to parties to arbitration.

## SECTIONS.

526. Filing and enforcement of such award.
- 

## CHAPTER XXXVIII.

## OF PROCEEDINGS ON AGREEMENT OF PARTIES.

527. Power to state case for Court's opinion  
528. When value of subject-matter must be stated.  
529. Agreement to be filed and numbered as suit.  
530. Parties to be subject to Court's jurisdiction.  
531. Hearing and disposal of case
- 

## CHAPTER XXXIX

## OF SUMMARY PROCEDURE ON NEGOTIABLE INSTRUMENTS.

532. Institution of summary suits upon bills of exchange, etc  
Payment into Court of sum mentioned in summons  
533. Defendant showing defence on merits to have leave to appear  
534. Power to set aside decree  
535. Power to order bill, etc, to be deposited with officer of Court  
536. Recovery of cost of noting non-acceptance of dishonoured bill or  
note  
537. Procedure in suits under Chapter.  
538. Application of Chapter.
- 

## CHAPTER XL.

## OF SUITS RELATING TO PUBLIC CHARITIES.

539. When suit relating to public charities may be brought.
- 

**PART VI.****OF APPEALS.**

## CHAPTER XLI

## OF APPEALS FROM ORIGINAL DECREES.

540. Appeal to lie from all original decrees, except when expressly  
prohibited.  
541. Form of appeal.  
What to accompany memorandum.  
Contents of memorandum.  
542. Appellant confined to grounds set out.  
543. Rejection or amendment of memorandum.  
544. One of several plaintiffs or defendants may obtain reversal of  
whole decree if it proceed on ground common to all.

*Of staying and executing Decrees under Appeal.*

## SECTIONS.

- 545. Execution of decree not stayed solely by reason of appeal.  
Stay of execution of appealable decree before time for appealing has expired.
- 546. Security in case of order for execution of decree appealed against.
- 547. No such security to be required from Government or public officers.

*Of Procedure in Appeal from Decrees.*

- 548. Registry of memorandum of appeal.  
Register of appeals
- 549. Appellate Court may require appellant to give security for costs.  
When appellant resides out of British India.
- 550. Appellate Court to give notice to Court whose decree appealed against.  
Transmission of papers to Appellate Court.  
Copies of exhibits in Court whose decree appealed against.
- 551. Power to dismiss appeal without sending notice to Lower Court.
- 552. Day for hearing appeal.
- 553. Publication and service of notice of day for hearing appeal.  
Appellate Court may itself cause notice to be served.
- 554. Contents of notice.

*Procedure on Hearing.*

- 555. Right to begin.
- 556. Dismissal of appeal for appellant's default.  
Hearing appeal *ex parte*
- 557. Dismissal of appeal where notice not served in consequence of appellant's failure to deposit cost.  
Proviso.
- 558. Re-admission of appeal dismissed for default
- 559. Power to adjourn hearing, and direct persons appearing interested to be made respondents.
- 560. Re-hearing on application of respondent against whom *ex parte* decree made.
- 561. Upon hearing, respondent may object to decree as if he had preferred separate appeal.  
Form of notice, and provisions applicable thereto.
- 562. Remand of case by Appellate Court
- 563. [*Rep. by Act VII of 1888, s. 50*]
- 564. Limit to remand
- 565. When evidence on record sufficient.  
Appellate Court may determine case finally.
- 566. When Appellate Court may frame issues and refer them for trial to Court whose decree appealed against.
- 567. Finding and evidence to be put on record.  
Objections to finding.  
Determination of appeal
- 568. Production of additional evidence in Appellate Court.

## SECTIONS.

- 569. Mode of taking additional evidence.
- 570. Points to be defined and recorded

*Of the Judgment in Appeal*

- 571 Judgment when and where pronounced.
- 572. Language of judgment.
- 573. Translation of judgment
- 574 Contents of judgment.  
Date and signature.
- 575 Decision when appeal heard by two or more Judges.
- 576 Dissent to be recorded
- 577. What judgment may direct
- 578 No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction.

*Of the Decree in Appeal*

- 579. Date and contents of decree  
Judge dissenting from judgment need not sign decree
- 580. Copies of judgment and decree to be furnished to parties
- 581. Certified copy of decree to be sent to Court whose decree appealed against
- 582. Appellate Court to have same powers as Courts of original jurisdiction.
- 582A. Validation of certain memoranda of appeals or applications for review of judgment.
- 583 Execution of decree of Appellate Court.

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CHAPTER XLII

## OF APPEALS FROM APPELLATE DECREES.

- 584. Second appeals to High Court  
Grounds of second appeal.
- 585. Second appeal on no other grounds
- 586. No second appeal in certain suits.
- 587. Provisions as to second appeal.

---

CHAPTER XLIII

## OF APPEALS FROM ORDERS.

- 588. Orders appealable.
- 589. What Courts to hear appeals.
- 590. Procedure in appeals from orders.
- 591. No other appeal from orders ; but error therein may be set forth in memorandum of appeal against decree.

## CHAPTER XLIV

## OF PAUPER APPEALS.

## SECTIONS.

- 592 Who may appeal as pauper  
Procedure on application for admission of appeal.  
593 Inquiry into pauperism.  
Proviso.
- 

## CHAPTER XLV.

## OF APPEALS TO THE QUEEN IN COUNCIL.

- 594 "Decree" defined.  
595 When appeals lie to Queen in Council.  
596 Value of subject-matter.  
597 Bar of certain appeals.  
598. Application to Court whose decree complained of.  
599 [*Rep by Act VII of 1888, s. 57*]  
600. Certificate as to value or fitness  
601 Effect of refusal of certificate  
602 Security and deposit required on grant of certificate.  
603 Admission of appeal and procedure thereon.  
604 Revocation of acceptance of security  
605 Power to order further security or payment.  
606 Effect of failure to comply with order.  
607 Refund of balance of deposit.  
608 Powers of Court pending appeal  
609 Increase of security found inadequate.  
610 Procedure to enforce orders of Queen in Council.  
611 Appeal against order relating to execution.  
612 Power to make rules.  
Publication of rules.  
613 Legalization of existing rules  
614 Recorder of Rangoon.  
615 Construction of Bengal Regulation III of 1828, section 4, clause 5.  
616 Saving of Her Majesty's pleasure, and of rules for conduct of  
business before Judicial Committee.
- 

## PART VII.

## CHAPTER XLVI.

## OF REFERENCE TO AND REVISION BY THE HIGH COURT.

617. Reference of question to High Court.  
618. Court may pass decree contingent upon opinion of High Court.  
619. Judgment of High Court to be transmitted, and case disposed of  
accordingly  
620 Costs of reference to High Court.

## SECTIONS.

- 621 Power to alter, etc., decrees of Court making reference.
- 622. Power to call for record of cases not appealable to High Court.

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**PART VIII.**

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## CHAPTER XLVII.

## OF REVIEW OF JUDGMENT.

- 623. Application for review of judgment.
- 624. To whom applications for review may be made.
- 625. Form of applications for review.
- 626. Application when rejected  
Application when granted.  
Proviso.
- 627. Application for review in Court consisting of two or more Judges
- 628 Application when rejected
- 629. Order of rejection final  
Objections to admission.
- 630. Registry of application granted, and order for re-hearing.

---

**PART IX.**

---

## CHAPTER XLVIII.

## SPECIAL RULES RELATING TO THE CHARTERED HIGH COURTS.

- 631 Chapter to apply only to certain High Courts.
- 632. Application of Code to High Courts
- 633. High Court to record judgments according to its own rules.
- 634. Power to order execution of decree before ascertainment of costs,  
and execution for costs subsequently.
- 635. Unauthorized persons not to address Court.
- 636. Who may serve process of High Court.
- 637. Non-judicial acts may be done by Registrar
- 638. Sections not applying to High Court in original civil jurisdiction.  
Code not to affect High Court in exercise of insolvent jurisdiction.
- 639. Power to frame forms.

---

**PART X.**

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## CHAPTER XLIX.

## MISCELLANEOUS.

- 640. Exemption of certain women from personal appearance.
- 641. Local Government may exempt certain persons from personal  
appearance.  
Lists of names of persons exempted to be kept in Courts.  
Costs of commission rendered necessary by claiming privilege.

## SECTIONS.

- 642. Persons exempt from arrest under civil process.
- 643. Procedure in case of certain offences.
- 644. Use of forms in fourth schedule.
- 645. Language of subordinate Courts.
- 645A. Assessors in causes of salvage, etc.
- 646. Power of Registrars of Small Cause Courts to state cases.
- 646A. Power to refer to High Court questions as to jurisdiction in small causes.
- 646B. Power to District Court to submit for revision proceedings had under mistake as to jurisdiction in small causes.
- 647. Miscellaneous proceedings.  
Admission of affidavits as evidence.
- 648. Procedure when person to be arrested or property to be attached is outside district.
- 649. Rules applicable to all civil process for arrest, sale or payment.
- 650. Application of rules as to witnesses.
- 650A. Service of foreign summonses.
- 651. [*Rep by Act X of 1886, s. 24 (2).*]
- 652. Power to make subsidiary rules of procedure.
- 653. Release on ground of illness of judgment-debtor.

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THE FIRST SCHEDULE.—ACTS REPEALED.

THE SECOND SCHEDULE.—CHAPTERS AND SECTIONS OF THIS CODE  
EXTENDING TO PROVINCIAL COURTS OF  
SMALL CAUSES.

THE THIRD SCHEDULE.—BOMBAY ENACTMENTS.

THE FOURTH SCHEDULE.—FORMS OF PLEADINGS AND DECREES.

ACT No XIV OF 1882<sup>1</sup>

[17th March, 1882.]

An Act to consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature.

Preamble        WHEREAS it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature, It is hereby enacted as follows :—

PRELIMINARY.<sup>2</sup>

Short title	1. This Act may be cited as the Code of Civil Procedure: <sup>3</sup>
Commence- ment.	and it shall come into force on the first day of June, 1882
Local extent.	This section and section 3 extend to the whole of British India The other sections extend to the whole of British India except the Scheduled Districts as defined in Act No XIV of 1874.
Interpreta- tion-clause	2. In this Act, unless there be something repugnant in the subject or context,—
“Chapter.”	“Chapter” means a Chapter of this Code:
“district.”	“district” means the local limits of the jurisdiction of a principal Civil
“District Court.”	Court of original jurisdiction (hereinafter called a “District Court”), and includes the local limits of the ordinary original civil jurisdiction of a High Court; every Court of a grade inferior to that of a District Court and every Court of Small Causes shall, for the purposes of this Code, be deemed to be subordinate to the High Court and the District Court.
“pleader.”	“pleader” means every person entitled to appear and plead for another in Court, and includes an advocate, a vakil and an attorney of a High Court:

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<sup>1</sup> For the Statement of Objects and Reasons, *see* Gazette of India, 1882, Pt V, p 59; for debates in Council, *see ibid*, 1882, Supplement, pp 66, 90, 330, and Extra Supplement, p 39

For applications of this Act or portions thereof to Scheduled Districts, *see* list in Appendix *infra*, p 579

<sup>2</sup> Sections 1, 2 and 3 extend to Provincial Small Cause Courts constituted under Act IX of 1887, *see* s 5 and second schedule (For Act IX of 1887, *see* General Acts, Vol V, Ed 1898, p 128)

<sup>3</sup> Any provisions of this Code may, by rule made under s 19 of the Central Provinces Land-revenue Act, 1881 (XVIII of 1881), be applied to all or any classes of cases before Revenue-officers in the Central Provinces (For Act XVIII of 1881, *see* the revised edition, as modified up to 1st November, 1898, published by the Legislative Department) For similar power in the Punjab, *see* the Punjab Tenancy Act, 1887 (XVI of 1887), s 88, printed, Punjab Code, Ed 1888, p 273

For power to modify the Code in its application to suits between landlords and tenants in places in Bengal, where the Bengal Tenancy Act is in force, or comes into operation, *see* Act VIII of 1885, s 143, printed, Bengal Code, Vol I, Ed 1889

"Government Pleader" includes also any officer appointed<sup>1</sup> by the Local Government to perform all or any of the functions expressly imposed by this Code on the Government Pleader

"Government  
Pleader:"

"Collector" means every officer performing the duties of a Collector of land-revenue:

"Collector:"

"decree" means the formal expression of an adjudication upon any right claimed, or defence set up, in a Civil Court when such adjudication, so far as regards the Court expressing it, decides the suit or appeal. An order rejecting a plaint, or directing accounts to be taken, or determining any question mentioned or referred to in section 244, but not specified in section 588, is within this definition an order specified in section 588 is not within this definition:

"decree:"

"order" means the formal expression of any decision of a Civil Court which is not a decree as above defined:

"Order:"

"judgment" means the statement given by the Judge of the grounds of a decree or order:

"judgment:"

"Judge" means the presiding officer of a Court:

"Judge "

"judgment-debtor" means any person against whom a decree or order has been made:

"judgment-  
debtor."

"decree-holder" means any person in whose favour a decree or any order capable of execution has been made, and includes any person to whom such decree or order is transferred:

"decree-  
holder."

"written" includes printed and lithographed, and "writing" includes print and lithograph:

"written:"

"signed" includes marked, when the person making the mark is unable to write his name; it also includes stamped with the name of the person referred to:

"signed:"

"foreign Court" means a Court situate beyond the limits of British India and not having authority in British India nor established by the Governor General in Council:

"foreign  
Court."

"foreign judgment"<sup>2</sup> means the judgment of a foreign Court:

"foreign  
judgment:"  
"public  
officer:"

"public officer" means a person falling under any of the following descriptions (namely):—

every Judge;

<sup>1</sup> For order appointing certain officers to perform the functions of Government Pleaders in Burma, see Burma Rules Manual, Ed 1897, pp 109 and 110, and Burma Gazette, 1897, Pt I, p 301

<sup>2</sup> For limitation of suits in foreign judgments, see the Indian Limitation Act, 1877 (XV of 1877), Sch II, art 117, and s 3 of the Code (For Act XV of 1877, see General Acts, Vol III, Ed 1898, p. 75)

every covenanted servant of Her Majesty;

every commissioned officer in the military or naval forces of Her Majesty while serving under Government;

every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties;

every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience,

every officer whose duty it is, as such officer, to take, receive, keep or expend any property in behalf of Government, or to make any survey, assessment or contract on behalf of Government, or to execute any revenue-process, or to investigate, or to report on, any matter affecting the pecuniary interests of Government, or to make, authenticate or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government, or remunerated by fees or commission for the performance of any public duty:

“Govern-  
ment.”

and in any part of British India in which this Code operates, “Government” includes the Government of India as well as the Local Government.

Enactments  
repealed

3. The enactments specified in the first schedule hereto annexed are hereby repealed to the extent mentioned in the third column thereof. But all notifications published, declarations and rules made, places appointed, agreements filed, scales prescribed and forms framed under any such enactment, shall, so far as they are consistent with this Code, be deemed to be respectively published, made, appointed, filed, prescribed and framed hereunder.

References  
in previous  
Acts.

And when in any Act, Regulation or notification passed or issued prior to the day on which this Code comes into force, reference is made to Act No. VIII of 1859, Act No. XXIII of 1861 or the “Code of Civil Procedure,” or to Act No. X of 1877, or to any other Act hereby repealed, such reference shall, so far as may be practicable, be read as applying to this Code or the corresponding part thereof.

Save as provided by section 99A, nothing herein contained shall affect any proceedings prior to decree in any suit instituted or appeal presented before the first day of June, 1882, or any proceedings after decree that may have been commenced and were still pending at that date.

Saving of procedure in suits instituted before 1st June, 1882.

Every appeal pending on the twenty-ninth day of July, 1879, which would have lain if this Code had been in force on the date of its presentation, shall be heard and determined as if this Code had been in force on such date; and every order passed before the same day, purporting to transfer a case to a Collector under Act No X of 1877, section 320, and every notification published before the same day, purporting to be issued under Act No. X of 1877, section 360, shall be deemed to have been respectively passed and issued in accordance with law.

Appeals pending on 29th July, 1879.

4. Save as provided in the second paragraph of section 3, nothing herein contained shall be deemed to affect the following enactments (namely):—

Saving of certain Acts affecting Central Provinces, Burma, Punjab and Oudh.

XVI of 1885

the Central Provinces Civil Courts Act, 1885:<sup>1</sup>

XI of 1889

the Lower Burma Courts Act, 1889:<sup>2</sup>

XVII of 1877

the Punjab Courts Act, 1877:<sup>3</sup>

XIII of 1879

the Oudh Civil Courts Act, 1879.<sup>4</sup>

24 & 25  
Vict., c. 67.

or any law heretofore or hereafter passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council prescribing a special procedure for suits between landholders and their tenants or agents,

24 & 25  
Vict., c. 67.

or any law heretofore or hereafter passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council providing for the partition of immoveable property

And, where under any of the said Acts concurrent civil jurisdiction is given to the Commissioner and the Deputy Commissioner, the Local Government may declare which of such officers shall, for the purposes of this Code, be deemed to be the District Court.

4A.<sup>5</sup> (1) Where any Revenue Courts are governed by the provisions of the Code of Civil Procedure in those matters of procedure upon which any special enactment applicable to them is silent, the Local Government, with the previous sanction of the Governor General in Council, may, by notification<sup>6</sup> in the official Gazette, declare that any portions of those provisions

Power to modify the Code in its application to Revenue Courts.

<sup>1</sup> See s 2 (2) of the Act, printed, Central Provinces Code, Ed 1891

<sup>2</sup> See s 2 of the Act, printed, Burma Code, Ed 1889

<sup>3</sup> See now Act XVIII of 1884, printed, Punjab Code, Ed 1888

<sup>4</sup> Printed, N-W P and Oudh Code, Ed 1892, p 355

<sup>5</sup> S 4A was inserted by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s. 3, printed, General Acts, Vol V, Ed. 1898, p. 232.

<sup>6</sup> For notification under this power affecting Revenue Courts in the North-Western Provinces and Oudh, see North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 110.

shall not apply to those Courts, or shall only apply to them with such modifications as the Local Government, with the sanction aforesaid, may prescribe

(2) "Revenue Court" in sub-section (1) means a Court having jurisdiction under any local law to entertain suits relating to the rent, revenue or profits of land used for agricultural purposes, but does not include a Civil Court having original jurisdiction under this Code to try such suits as being suits of a civil nature of which its cognizance is not barred by any enactment for the time being in force

Sections  
extending  
to Provincial  
Small Cause  
Courts

5. The Chapters and sections of this Code specified in the second schedule hereto annexed extend (so far as they are applicable) to Courts of Small Causes constituted under Act No IX of 1887<sup>1</sup>, and to all other Courts (other than the Courts of Small Causes in the towns of Calcutta, Madras and Bombay<sup>2</sup> exercising the jurisdiction of a Court of Small Causes. The other Chapters and sections of this Court do not extend to such Courts

Saving of  
jurisdiction  
and proce-  
dure

6. Nothing in this Code affects the jurisdiction or procedure —

(a) [of *Military Courts of Request*] *Rep by Act XIII of 1889*;<sup>3</sup>

(b) [of *officers appointed to try small suits in Bombay*.] *Rep. by Act VIII of 1887, section 2 and Schedule*

(c) of Village  
Munsifs and  
Village  
Pancháyats  
in Madras,  
(d) of Recorder  
of Ran-  
goon sitting  
as Insolvent  
Court.

(c) of Village Munsifs or Village Pancháyats under the provisions of the Madras Code:<sup>4</sup> or

(d) of the Recorder of Rangoon sitting as an Insolvent Court in Rangoon<sup>5</sup> [or Maulmain];

or shall operate to give any Court jurisdiction over suits of which the amount or value of the subject-matter exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

Saving of  
certain  
Bombay  
laws

7. With respect to—

(a) the jurisdiction exercised by certain jágírdárs and other authorities invested with powers under the provisions of Bombay Regulation

<sup>1</sup> See s 2 (3) of the Act, printed, General Acts, Vol V, Ed 1898, p 128

<sup>2</sup> As to portions of this Code extending to these Courts, see the Presidency Small Cause Courts Act, 1882 (XV of 1882), s 23, printed, *infra*, p 590

<sup>3</sup> The Cantonments Act, 1889, printed, General Acts, Vol V, Ed 1898, p 335

<sup>4</sup> See Madras Regulation IV of 1816 (Village Munsifs) and the Madras Village Munsifs' Jurisdiction Act (IV of 1883), printed, Madras Code, Ed 1888, and awards by Pancháyats, see Madras Regulation V of 1816 (Village Pancháyats) and Madras Act (VIII of 1840), printed, *ibid*

<sup>5</sup> The words "or Maulmain" were substituted for the words 'Maulmain, Akyab or Bassen' by the Repealing and Amending Act, 1891 (XII of 1891), printed, General Acts, Vol. VI

(Preliminary. Secs. 8-9. Part I.—Of Suits in General. Chapter I—  
Of the Jurisdiction of the Courts and Res Judicata. Sec. 10)

XIII of 1830 and Act No XV of 1840 in the cases therein mentioned, and

(b) cases of the nature defined in the enactments specified in the third schedule hereto annexed,

the procedure in such cases and in the appeals to the Civil Courts allowed therein shall be according to the rules laid down in this Code, except where those rules are inconsistent with any specific provisions contained in the enactments mentioned or referred to in this section.

XV of 1882

8. Save as provided in sections 3, 25, 86, 223, 225, 386, and Chapter XXXIX, <sup>1</sup> [and by the Presidency Small Cause Courts Act, 1882,] this Code shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay

Presidency  
Small Cause  
Courts

\* \* \* \* \*

9. This Code is divided into ten Parts, as follows:—

Division  
of Code

The First Part.	Suits in General.
The Second Part:	Incidental Proceedings.
The Third Part.	Suits in Particular Cases.
The Fourth Part:	Provisional Remedies
The Fifth Part:	Special Proceedings.
The Sixth Part:	Appeals.
The Seventh Part:	Reference to and Revision by the High Court.
The Eighth Part:	Review of Judgment.
The Ninth Part:	Special Rules relating to the Chartered High Courts.
The Tenth Part	Certain Miscellaneous Matters.

## PART I. OF SUITS IN GENERAL.

### CHAPTER I.<sup>3</sup>

#### OF THE JURISDICTION OF THE COURTS AND RES JUDICATA.

10. No person shall, by reason of his descent or place of birth, be in any civil proceeding exempted from the jurisdiction of any of the Courts.

No person  
exempt from  
jurisdiction  
by reason of  
descent or  
place of  
birth

<sup>1</sup> These words in s 8 were added by the Presidency Small Cause Courts Act, 1882 (XV of 1882), s 3, printed, *infra*, p 590

<sup>2</sup> The second paragraph of s 8 was repealed by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 4, printed, General Acts, Vol V, Ed 1898, p 232

<sup>3</sup> This Chapter, except s 11 and the last paragraph of s 14, extends to Provincial Small Cause Courts, *see* s 5 and the second schedule.

(Part I.—Of Suits in General. Chapter I.—Of the Jurisdiction of the Courts and Res Judicata Secs 11-13.)

Courts to try all civil suits unless specially barred

11. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is barred by any enactment for the time being in force.

*Explanation*—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Pending suits.

12. Except where a suit has been stayed under section 20, the Court shall not try any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit for the same relief between the same parties, or between parties under whom they or any of them claim, pending in the same or any other Court, whether superior or inferior, in British India having jurisdiction to grant such relief, or in any Court beyond the limits of British India established by the Governor General in Council and having like jurisdiction, or before Her Majesty in Council.

*Explanation*—The pendency of a suit in a foreign Court does not preclude the Courts in British India from trying a suit founded on the same cause of action.

Res judicata.

13. No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court of jurisdiction competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and

has been heard and finally decided by such Court.

*Explanation I.*—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

*Explanation II*—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

*Explanation III.*—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purpose of this section, be deemed to have been refused.

(Part I.—Of Suits in General. Chapter I.—Of the Jurisdiction of the Courts and Res Judicata Sec. 14)

*Explanation IV.*—A decision is final within the meaning of this section when it is such as the Court making it could not alter (except on review) on the application of either party or reconsider of its own motion. A decision liable to appeal may be final within the meaning of this section until the appeal is made.

*Explanation V.*—Where persons litigate *bonâ fide* in respect of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purpose of this section, be deemed to claim under the persons so litigating.

*Explanation VI.*—Where a foreign judgment is relied on, the production of the judgment duly authenticated is presumptive evidence that the Court which made it had competent jurisdiction, unless the contrary appear on the record; but such presumption may be removed by proving the want of jurisdiction.

14. No foreign judgment shall operate as a bar to a suit in British India—

When foreign judgment no bar to suit in British India.

- (a) if it has not been given on the merits of the case :
- (b) if it appears on the face of the proceedings to be founded on an incorrect view of international law or of any law in force in British India :
- (c) if it is in the opinion of the Court before which it is produced contrary to natural justice :
- (d) if it has been obtained by fraud :
- (e) if it sustains a claim founded on a breach of any law in force in British India.

<sup>1</sup> [Where a suit is instituted in British India on the judgment of any foreign Court in Asia or Africa except a Court of Record established by Letters Patent of Her Majesty or any predecessor of Her Majesty or a Supreme Consular Court established by an order of Her Majesty in Council, the Court in which the suit is instituted shall not be precluded from inquiry into the merits of the case in which the judgment was passed.]

<sup>1</sup> This paragraph was added to s 14 by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 5, printed, General Acts, Vol V, Ed 1898, p 232

(Part I.—Of Suits in General Chapter II.—Of the Place of Suing.  
Secs. 15-16)

CHAPTER II.<sup>1</sup>

## OF THE PLACE OF SUING.

Court in  
which suit  
to be insti-  
tuted  
Suits to be  
instituted  
where sub-  
ject-matter  
situate

15.<sup>2</sup> Every suit shall be instituted in the Court of the lowest grade competent to try it<sup>3</sup>.

16. Subject to the pecuniary or other limitations prescribed by any law, suits—

- (a) for the recovery of immoveable property,
- (b) for the partition of immoveable property,
- (c) for the foreclosure or redemption of a mortgage of immoveable property,
- (d) for the determination of any other right to or interest in immoveable property,
- (e) for compensation for wrong to immoveable property,
- (f) for the recovery of immoveable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate.

Provided that suits to obtain relief respecting, or compensation for wrong to, immoveable property held by or on behalf of the defendant may, when the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction he actually and voluntarily resides, or carries on business, or personally works for gain:

*Explanation*—In this section “property” means property situate in British India.

<sup>1</sup> This Chapter, except s 20, paragraph 4, and ss 22 to 64 (both inclusive), extends to Provincial Small Cause Courts, *see* s 5 and the second schedule ss 16, 17 and 19 do not apply to the Chartered High Courts in the exercise of their original civil jurisdiction, *see* s 638, *infra*

<sup>2</sup> S 15 has been repealed in Ajmere and Merwára, *see* the Ajmere Courts Regulation (I of 1877), s 2 and schedule, printed, Ajmere Code, Ed 1893, p 147

<sup>3</sup> In Ajmere, by the Ajmere Courts Regulation (I of 1877), s 25, the Commissioner may direct the civil judicial business to be distributed among the Courts of the three lowest grades. In Lower Burma, by the Lower Burma Courts Act, 1889 (XI of 1889), s 16 (Burma Code, Ed 1889, p 310) a Deputy Commissioner may, by written order, direct that business be distributed in his Court and subordinate Courts, as he thinks fit. By the Central Provinces Civil Courts Act, 1885 (XVI of 1885), s 16 (Central Provinces Code, Ed 1891, p 266), the Court of the Commissioner and Deputy Commissioner “may, by order in writing, direct that any civil business cognizable by it and the Courts under its control shall be distributed among those Courts in such manner as it thinks fit,” similarly, in the Punjab, every Divisional Court and District Court,” *see* the Punjab Courts Act, 1884 (XVIII of 1884), reprinted by the Legislative Department, as modified up to 1st April, 1891.

(Part I.—Of Suits in General. Chapter II—Of the Place of Suing  
Secs. 16A-17)

16A.<sup>1</sup> (1) When it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any immoveable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its jurisdiction :

Place for institution of suit where local limits of jurisdiction of Courts are uncertain

Provided that the suit is one with respect to which the Court is competent as regards the nature and value of the suit to exercise jurisdiction

(2) Where a statement has not been recorded under sub-section (1), and an objection is taken before an appellate or revisional Court that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the appellate or revisional Court shall not allow the objection if in its opinion there was, at the time of the institution of the suit, any reasonable ground for uncertainty as to the Court having jurisdiction with respect thereto

17. Subject to the limitations aforesaid, all other suits shall be instituted in a Court within the local limits of whose jurisdiction—

- (a) the cause of action arises,<sup>2</sup> or
- (b) all the defendants, at the time of the commencement of the suit, actually and voluntarily reside, or carry on business, or personally work for gain, or
- (c) any of the defendants, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business or personally works for gain :

Suits to be instituted where defendants reside or cause of action arose.

Provided that either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution.

*Explanation I.*—Where a person has a permanent dwelling at one place and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging

*Explanation II*—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British India or, in respect of

<sup>1</sup> S 16A was inserted by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 6, printed, General Acts, Vol V, Ed 1898, p 232

<sup>2</sup> As to suits between landlord and tenant in Bengal, see the Bengal Tenancy Act, 1885 (VIII of 1885), s 144 (1), printed, Bengal Code, Vol I, Ed 1889.

(Part I.—Of Suits in General Chapter II—Of the Place of Suing.  
Secs. 18-19)

any cause of action arising at any place where it has also a subordinate office, at such place.

<sup>1</sup> *Explanation III.*—In suits arising out of contract, the cause of action arises within the meaning of this section at any of the following places, namely:—

- (i) the place where the contract was made;
- (ii) the place where the contract was to be performed or performance thereof completed;
- (iii) the place where in performance of the contract any money to which the suit relates was expressly or impliedly payable.

*Illustrations.*

(a) A is a tradesman in Calcutta. B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A and requests A to deliver them to the East Indian Railway Company. A delivered the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen, or in Delhi, where B carries on business.

(b) A resides at Simla, B at Calcutta and C at Delhi. A, B and C being together at Benares, B and C make a joint promissory-note payable on demand, and deliver it to A. A may sue B and C at Benares, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot be maintained without the leave of the Court.

Suits for compensation for wrongs to person or moveables.

18. In suits for compensation for wrong done to person or moveable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain within the local limits of the jurisdiction of another Court, the plaintiff may at his option sue in either of the said Courts.

*Illustrations.*

(a) A, residing in Delhi, beats B in Calcutta. B may sue A either in Calcutta or in Delhi.

(b) A, residing in Delhi, publishes in Calcutta statements defamatory of B. B may sue A either in Calcutta or in Delhi.

(c) A, travelling on the line of a Railway Company whose principal office is at Howrah, is upset and injured at Allahabad by negligence imputable to the Company. He may sue the Company either at Howrah or at Allahabad.

Suits for immoveable property situate in single dis-

19. If the suit be to obtain relief respecting, or compensation for wrong to, immoveable property situate within the limits of a single district, but

<sup>1</sup> *Explanation III* of s 17 was inserted by the Debtors Act, 1888 (VI of 1888), s 7, printed, General Acts, Vol. V, Ed 1898, p 229

within the jurisdiction of different Courts, the suit may be instituted in the Court within whose jurisdiction any portion of the property is situate:

Provided that, in respect of the value of the subject-matter of the suit, the entire claim be cognizable by such Court.

If the immoveable property be situate within the limits of different districts, the suit may be instituted in any Court, otherwise competent to try it, within whose jurisdiction any portion of the property is situate.

20. If a suit may be instituted in more than one Court is instituted in a Court within the local limits of whose jurisdiction the defendant or all the defendants does not or do not actually and voluntarily reside, or carry on business, or personally work for gain, the defendant or any defendant may, after giving notice in writing to the other parties of his intention to apply to the Court to stay proceedings, apply to the Court accordingly;

and, if the Court, after hearing such of the parties as desire to be heard, is satisfied that justice is more likely to be done by the suit being instituted in some other Court, it may stay proceedings either finally or till further order, and make such order as it thinks fit as to the costs already incurred by the parties or any of them.

In such case, if the plaintiff so requires, the Court shall return the plaint with an endorsement thereon of the order staying proceedings.

Every such application shall be made at the earliest possible opportunity, and in all cases before the issues are settled; and any defendant not so applying shall be deemed to have acquiesced in the institution of the suit.

21. Where the Court, under section 20, stays proceedings, and the plaintiff, re-institutes his suit in another Court, the plaint shall not be chargeable with any court-fee:

Provided that the proper fee has been levied on the institution of the suit in the former Court, and that the plaint has been returned by such Court.

22. Where a suit may be instituted in more Courts than one and such Courts are subordinate to the same appellate Court, any defendant, after giving notice in writing to the other parties of his intention to apply to such Court to transfer the suit to another Court, may apply accordingly; and the appellate Court, after hearing the other parties, if they desire to be heard, shall determine in which of the Courts having jurisdiction the suit shall proceed.

tract, but within jurisdictions of different Courts.

Suits for immoveable property situate in different districts Power to stay proceedings where all defendants do not reside within jurisdiction.

Application when to be made

Remission of court-fee where suit instituted in another Court.

Procedure where Courts in which suit may be instituted subordinate to same appellate Court.

(Part I.—Of Suits in General. Chapter II.—Of the Place of Suing.  
Secs. 23-25)

Procedure  
where they  
are not so  
subordinate.

23. Where such Courts are subordinate to different appellate Courts, but are subordinate to the same High Court, any defendant, after giving notice in writing to the other parties of his intention to apply to the High Court to transfer the suit to another Court having jurisdiction, may apply accordingly. If the suit is brought in any Court subordinate to a District Court, the application, together with the objections, if any, filed by the other parties, shall be submitted through the District Court to which such Court is subordinate. The High Court may, after considering the objections, if any, of the other parties, determine in which of the Courts having jurisdiction the suit shall proceed.

Procedure  
where they  
are subor-  
dinate to  
different  
High Courts.

24. Where such Courts are subordinate to different High Courts, any defendant may, after giving notice in writing to the other parties of his intention to apply to the High Court within whose jurisdiction the Court in which the suit is brought is situate, apply accordingly.

If the suit is brought in any Court subordinate to a District Court, the application, together with the objections, if any, filed by the other parties, shall be submitted through the District Court to which such Court is subordinate;

and such High Court shall, after considering the objections, if any, of the other parties, determine in which of the several Courts having jurisdiction the suit shall proceed.

Transfer  
of suits

<sup>1</sup> 25 <sup>2</sup> The High Court or District Court may, on the application of any of the parties, after giving notice to the parties and hearing such of them as desire to be heard, or of its own motion without giving such notice, withdraw any suit, whether pending in a Court of first instance or in a Court of appeal subordinate to such High Court or District Court, as the case may be, and try the suit itself, or transfer it for trial to any other such subordinate Court competent to try the same in respect of its nature and the amount or value of its subject-matter.

For the purposes of this section the Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court

<sup>1</sup>In the Punjab Divisional Courts every Commissioner or Deputy Commissioner may exercise the powers of a District Court under this section, and each of the above-mentioned officers may by written order distribute business cognizable by his Court among the Courts under his control, *see* the Punjab Courts Act, 1884 (XVIII of 1884), ss 34 and 38. For Act XVIII of 1884, *see* the revised edition, as modified up to 1st April, 1891, published by the Legislative Department.

<sup>2</sup>S 25 has been repealed in Ajmere and Merwára, *see* the Ajmere Courts Regulation, 1877 (I of 1877), s 2, and schedule, also s 26, *ibid.*, printed, Ajmere Code, Ed 1893, p 147.

(Part I.—Of Suits in General. Chapter III.—Of Parties and their Appearances, Applications and Acts. Secs. 26-30.)

The Court trying any suit withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

### CHAPTER III<sup>1</sup>

#### OF PARTIES AND THEIR APPEARANCES, APPLICATIONS AND ACTS.

26. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally or in the alternative, in respect of the same cause of action. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who is not found entitled to relief, unless the Court in disposing of the costs of the suit otherwise directs.

Persons who may be joined as plaintiffs

27. Where a suit has been instituted in the name of the wrong person as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may<sup>2</sup> [at any stage of the suit,] if satisfied that the suit has so commenced through a *bonâ fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person or persons<sup>2</sup> [with his or their consent] to be substituted or added as plaintiff or plaintiffs upon such terms as the Court thinks just.

Court may substitute or add plaintiff for or to plaintiff suing.

28. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative, in respect of the same matter. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

Persons who may be joined as defendants

29. The plaintiff may, at his option, join as parties to the same suit all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange, hundis and promissory notes.

Joinder of parties liable on same contract.

30. Where there are numerous parties having the same interest in one suit, one or more of such parties may, with the permission of the Court, sue or be sued, or may defend, in such suit, on behalf of all parties so interested. But the Court shall in such case give, at the plaintiff's expense,

One party may sue or defend on behalf of all in same interest.

<sup>1</sup> This Chapter extends to Provincial Small Cause Courts, *see* s. 5 and the second schedule

<sup>2</sup> These words in s. 27 were inserted by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s. 8, printed, General Acts, Vol V, Ed. 1898, p. 232

(Part I.—Of Suits in General Chapter III—Of Parties and their  
Appearances, Applications and Acts. Secs 31-33)

notice of the institution of the suit to all such parties either by personal service or (if from the number of parties or any other cause such service is not reasonably practicable) by public advertisement, as the Court in each case may direct

Suit not  
to fail by  
reason of  
misjoinder

31. No suit shall be defeated by reason of the misjoinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

Nothing in this section shall be deemed to enable plaintiffs to join in respect of distinct causes of action

Court may  
dismiss or  
add parties

32. The Court may, on or before the first hearing, upon the application of either party, and on such terms as the Court thinks just, order that the name of any party, whether as plaintiff or as defendant, improperly joined, be struck out;

and the Court may at any time either upon or without such application, and on such terms as the Court thinks just, order that any plaintiff be made a defendant or that any defendant be made a plaintiff, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added

Consent of  
person  
added as  
plaintiff or  
next friend  
Parties to  
suits insti-  
tuted or  
defended  
under  
section 30  
Defendants  
added to  
be served

No person shall be added as a plaintiff, or as the next friend of a plaintiff, without his own consent thereto.

Any person on whose behalf a suit is instituted or defended under section 30 may apply to the Court to be made a party to such suit.

All parties whose names are so added as defendants shall be served with a summons in manner hereinafter mentioned,<sup>1</sup> and (subject to the provisions of the Indian Limitation Act, 1877, section 22)<sup>2</sup> the proceedings as against them shall be deemed to have begun only on the service of such summons. XV of 1877.

Conduct  
of suit

The Court may give the conduct of the suit to such plaintiff as it deems proper.

Where de-  
fendant  
added, plaint  
to be  
amended.

33. Where a defendant is added, the plaint, if previously filed, shall, unless the Court direct otherwise, be amended in such manner as may be necessary, and an amended copy of the summons shall be served on the new defendant and the original defendants

<sup>1</sup> See s 74, *et seq*

<sup>2</sup> Printed, General Acts, Vol III, Ed 1898, p 75.

{Part I.—Of Suits in General Chapter III—Of Parties and their  
Appearances, Applications and Acts. Secs 34-37.)

34. All objections for want of parties, or for joinder of parties who have no interest in the suit, or for misjoinder as co-plaintiffs or co-defendants, shall be taken at the earliest possible opportunity, and in all cases before the first hearing; and any such objection not so taken shall be deemed to have been waived by the defendant.

Time for  
taking ob-  
jections as  
to non-  
joinder or  
misjoinder.

35. When there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding under this Code: and in like manner, when there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any such proceeding.

Each of  
several  
plaintiffs  
or defend-  
ants may  
authorize  
any other to  
appear, etc.,  
for him

The authority shall be in writing signed by the party giving it, and shall be filed in Court.

Authority  
to be in  
writing,  
signed and  
filed

*Recognized Agents and Pleadings.*

36. Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party to a suit or appeal in such Court, may, except when otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf:

Appearances,  
etc., may be  
in person, by  
recognized  
agent or  
by pleader.

Provided that any such appearance shall be made by the party in person, if the Court so direct.

<sup>1</sup> 37. <sup>2</sup> The recognized agents of parties by whom such appearances, applications and acts may be made or done are <sup>3</sup>—

Recognized  
agents

(a) persons holding general powers-of-attorney from parties not

Persons  
holding

<sup>1</sup> In Oudh substitute the following for ss 37 and 38 —

"The recognized agents of parties by whom such applications and appearances may be made are—

"a permanent servant, partner, relation or friend, whom the Court may admit as a fit person to represent a party, and specially persons holding powers-of-attorney from absent parties, parties carrying on business on behalf of bankers and traders, managing agents of landlords, nearest male relations of women, and persons *ex officio* authorized to act for Government or for any Prince or Chief

"Whenever the personal appearance of a party to a suit is required by this Act, such appearance may be made by his recognized agent, unless the Court shall otherwise direct; and anything which by this Act is required or permitted to be done by a party in person may be done by his recognized agent. Notices given to, or processes served on, a recognized agent, relative to a suit, shall be effectual for all purposes, in relation to the suit, as if the same had been given to or served on the party in person, unless the Court shall otherwise direct; and all the provisions of the Act, relative to the service of notices or processes on a party to a suit, shall be applicable to the service of notices and processes on such recognized agent," *see* the Oudh Laws Act, 1876 (XVIII of 1876), s 18, printed, North-Western Provinces and Oudh Code, Ed 1892

<sup>2</sup> *See* ss 11 and 16 of the Legal Practitioners Act, 1879 (XVIII of 1879), printed, General Acts, Vol III, Ed 1898, p 267

<sup>3</sup> As to recognized agents of Government, *see* ss 417 and 419, *infra*, and in the case of Princes and Chiefs, *see* s 432, *infra*

(Part I—Of Suits in General. Chapter III—Of Parties and their Appearances, Applications and Acts. Secs. 38-39)

powers-of-  
attorney  
from parties  
out of juris-  
diction

resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, authorizing them to make and do such appearances, applications and acts on behalf of such parties;

Certificated  
mukhtárs

(b) mukhtárs duly certificated under any law for the time being in force and holding special powers-of-attorney authorizing them to do, on behalf of their principals, such acts as may legally be done by mukhtárs;

Persons  
carrying on  
trade or busi-  
ness for  
parties out  
of juris-  
diction,

(c) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts<sup>1</sup>

Recognized  
agents in  
Punjab,  
Oudh and  
Central  
Provinces.

Nothing in the former part of this section applies to the territories now administered respectively by the Lieutenant-Governor of the Punjab, and the Chief Commissioners of Oudh and the Central Provinces; but in those territories the recognized agents of parties by whom such appearances, applications and acts may be made and done shall be such persons as the Local Government may, from time to time, by notification in the official Gazette, declare in this behalf<sup>2</sup>

Service of  
process on  
recognized  
agent.

38.<sup>3</sup> Processes served on the recognized agent of a party to a suit or appeal shall be as effectual as if the same had been served on the party in person, unless the Court otherwise directs.

The provisions of this Code for the service of process on a party to a suit shall apply to the service of process on his recognized agent.

Appoint-  
ment of  
pleader

439 The appointment of a pleader to make or do any appearance, application or act as aforesaid shall be in writing, and such appointment shall be filed in Court.

When so filed it shall be considered to be in force until revoked, with the leave of the Court, by a writing signed by the client and filed in Court,

<sup>1</sup> For additional "recognized agents" in Ajmere and Merwára, see the Ajmere Courts Regulation, 1877 (I of 1877), s 28, printed, Ajmere Code, Ed 1893

And in Bengal, in suits and applications under the Bengal Tenancy Act, 1885 (VIII of 1885), see s 145 of that Act, printed, Bengal Code, Vol I, Ed. 1889

<sup>2</sup> For notification declaring who shall be recognized agents in Oudh, see North-Western Provinces and Oudh List of Local Rules and Orders, Ed 1894, p 110

<sup>3</sup> As to Oudh, see footnote on previous page

<sup>4</sup> See Ch VI, *infra*

(*Part I.—Of Suits in General Chapter III.—Of Parties and their Appearances, Applications and Acts. Secs 40-41. Chapter IV.—Of the Frame of the Suit. Secs 42-43*)

or until the client or the pleader dies, or all proceedings in the suit are ended so far as regards the client.

No advocate of any High Court established by Royal Charter, <sup>1</sup> [or of the Chief Court of the Punjab] shall be required to present any document empowering him to act.

<sup>2</sup> [*Explanation.*—For the purposes of the enrolment of advocates the High Court of Bombay shall be at liberty to treat the Said Court of Sind as within the local limits of its jurisdiction.]

40. Processes served on the pleader of any party or left at the office or ordinary residence of such pleader, relative to a suit or appeal, and whether the same be for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents, and, unless the Court otherwise directs, shall be as effectual for all purposes in relation to the suit or appeal as if the same had been given to or served on the party in person.

Service of  
process on  
pleader.

41. Besides the recognized agents described in section 37 any person residing within the jurisdiction of the Court may be appointed an agent to accept service of process.

Agent to  
receive  
process.

Such appointment may be special or general and shall be made by an instrument in writing signed by the principal, and such instrument, or, if the appointment be general, a duly attested copy thereof, shall be filed in Court.

His appoint-  
ment to be  
in writing  
and to be  
filed in  
Court.

## CHAPTER IV.<sup>3</sup>

### OF THE FRAME OF THE SUIT.

42. Every suit shall, as far as practicable, be so framed as to afford ground for a final decision upon the subjects in dispute, and so to prevent further litigation concerning them.

Suit how to  
be framed.

<sup>4</sup> 43. Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may

Suit to in-  
clude whole  
claim.

<sup>1</sup> These words were inserted by the Punjab Laws Act Amendment Act, 1895 (VII of 1895), s 1 (1)

<sup>2</sup> This *Explanation* was added to s 39, by Act VII of 1895, s 1 (2)

<sup>3</sup> This Chapter, except ss 42 and 44, rule (a) extends to Provincial Small Cause Courts, see s 5 and the second schedule

<sup>4</sup> See the Transfer of Property Act, 1882 (VI of 1882), s 99, printed, *supra*, p 40

As to application of s 43 to suits instituted in Upper Burma under the Upper Burma Stamps and Limitation Regulation, 1887 (X of 1887), see s 7 (2) (a) of that Regulation, printed, Burma Code, Ed 1889

(Part I—Of Suits in General. Chapter IV—Of the Frame of the Suit. Secs. 44-45)

relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court

Relinquish-  
ment of  
part of  
claim.

If a plaintiff omit to sue in respect of, or intentionally relinquish, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

Omission to  
sue for one  
of several  
remedies.

A person entitled to more than one remedy in respect of the same cause of action may sue for all or any of his remedies; but, if he omits (except with the leave of the Court obtained before the first hearing) to sue for any of such remedies, he shall not afterwards sue for the remedy so omitted

For the purpose of this section an obligation and a collateral security for its performance shall be deemed to constitute but one cause of action.

*Illustration.*

A lets a house to B at a yearly rent of Rs 2,100 The rent for the whole of the years 1881 and 1882 is due and unpaid. A sues B only for the rent due for 1882. A shall not afterwards sue B for the rent due for 1881.

Only certain  
claims to be  
joined with  
suit for re-  
covery of  
land

44. *Rule a*—No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of immoveable property, or to obtain a declaration of title to immoveable property, except—

- (a) claims in respect of mesne profits or arrears of rent in respect of the property claimed,
- (b) damages for breach of any contract under which the property or any part thereof is held, and
- (c) claims by a mortgagee to enforce any of his remedies under the mortgage.

Claims by  
or against  
executor,  
administra-  
tor or heir

*Rule b.*—No claim by or against an executor, administrator or heir, as such, shall be joined with claims by or against him personally, unless the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor, administrator or heir, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents

Plaintiff  
may join  
several  
causes of  
action

45. Subject to the rules contained in Chapter II, and in section 44, the plaintiff may unite in the same suit several causes of action against the same defendant or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly, may unite such causes of action in the same suit.

(Part I—Of Suits in General. Chapter IV—Of the Frame of the Suit. Secs. 46-47. Chapter V.—Of the Institution of Suits. Secs. 48-49)

But if it appear to the Court that any such causes of action cannot be conveniently tried or disposed of together, the Court may, at my time before the first hearing, of its own motion or on the application of any defendant, or at any subsequent stage of the suit, if the parties agree, order separate trials of any such causes of action to be had, or make such other order as may be necessary or expedient for the separate disposal thereof.

Court may order separation.

When causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit, whether or not an order has been made under the second paragraph of this section.

46. Any defendant alleging that the plaintiff has united in the same suit several causes of action which cannot be conveniently disposed of in one suit may at any time before the first hearing, or, where issues are settled, before any evidence is recorded, apply to the Court for an order confining the suit to such of the causes of action as may be conveniently disposed of in one suit.

Defendant may apply to confine suit.

47. If, on the hearing of such application, it appears to the Court that the causes of action are such as cannot all be conveniently disposed of in one suit, the Court may order any of such causes of action to be excluded, and may direct the plaint to be amended accordingly, and may make such order as to costs as may be just.

Court on hearing application may exclude some causes and order amendment.

Every amendment made under this section shall be attested by the signature of the Judge.

## CHAPTER V.<sup>1</sup>

### OF THE INSTITUTION OF SUITS.

48. Every suit shall be instituted by presenting a plaint to the Court of such officer as it appoints in this behalf

Suits to be commenced by plaint.

49. The plaint must be distinctly written in the language of the Court.<sup>2</sup>

Language of plaint.

Provided that, if such language is not English the plaint may (with the permission of the Court) be written in English; but in such case, if the

<sup>1</sup> This Chapter extends to Provincial Small Cause Courts, *see* s. 5 and the second schedule

<sup>2</sup> In Lower Burma the Local Government may declare the language or languages in which plaints may be written and evidence taken down, *see* the Lower Burma Courts Act, 1889 (XI of 1889), s. 17, printed, Burma Code, Ed. 1889

(Part I.—Of Suits in General. Chapter V.—Of the Institution of Suits. Sec. 50)

defendant so require, a translation of the plaint into the language of the Court shall be filed in Court.

Particulars  
to be con-  
tained in  
plaint.

50. The plaint<sup>1</sup> must contain the following particulars.—

- (a) the name of the Court in which the suit is brought;
- (b) the name, description and place of residence of the plaintiff;
- (c) the name, description and place of residence of the defendant, so far as they can be ascertained;
- (d) a plain and concise statement of the circumstances constituting the cause of action and where and when it arose;
- (e) a demand of the relief which the plaintiff claims, and
- (f) if the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished.

In money-  
suits

If the plaintiff seeks the recovery of money, the plaint must state the precise amount, so far as the case admits.

In a suit for mesne profits, and in a suit for the amount which will be found due to the plaintiff on taking unsettled accounts between him and the defendant, the plaint need only state approximately the amount sued for.

Where  
plaintiff  
sues as re-  
presentative.

When the plaintiff sues in a representative character, the plaint should show not only that he has an actual existing interest in the subject-matter,

<sup>1</sup> For forms of plaints, see Sch IV, Nos 1 to 13, *infra*.

As to plaints in suits—

against the Secretary of State in Council, see s 424, *infra*

for infringement of patents, see the Inventions and Designs Act, 1888 (V of 1888), printed, General Acts, Vol V, p 195.

by Companies against a member of the Company, see the Indian Companies Act, 1882 (IV of 1882), s 94, printed, *supra*, p 100

between landlord and tenant in the Central Provinces, see the Central Provinces Tenancy Act, 1898 (XI of 1898);

between landlord and tenant in Chota Nagpur, see the Chota Nagpur Landlord and Tenant Procedure Act, 1879 (I of 1879), printed, Bengal Code, Vol II, Ed 1890;

under the North-Western Provinces Rent Act, 1881 (XII of 1881), see ss 104, 110 and 111 of that Act, printed, North-Western Provinces and Oudh Code, Ed 1892;

under the Oudh Rent Act, 1886 (XXII of 1886), see s 137 of that Act, printed, North-Western Provinces and Oudh Code, Ed 1892;

for recovery of rent in Madras, see Madras Recovery of Rent Act, 1865 (VIII of 1865), s 50, printed, Madras Code, Ed 1888;

for recovery of rent in Bengal, see the Bengal Tenancy Act, 1885 (VIII of 1885), s. 148 (d), printed, Bengal Code, Ed 1889, Vol I,

before Madras Village Munsifs, see Madras Regulation IV of 1816, s 11, printed, Madras Code, Ed 1888;

under the Mamlatdars' Courts Act, 1876 (Bombay Act III of 1876), see s 5 of that Act, printed, Bombay Code, Vol II, Ed 1896;

in interpleader suits, see s 471, *infra*

by the Secretary of State for India in Council, see s 418, *infra*.

## (Part I.—Of Suits in General. Chapter V.—Of the Institution of Suits. Secs. 51-53)

but that he has taken the steps necessary to enable him to institute a suit concerning it.

*Illustrations*

- (a) A sues as B's executor. The plaint must state that A has proved B's will.  
 (b) A sues as C's administrator. The plaint must state that A has taken out administration to C's estate  
 (c) A sues as guardian of D, a Muhammadan minor. A is not D's guardian according to Muhammadan law and usage. The plaint must state that A has been specially appointed D's guardian.

The plaint must shew that the defendant is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiff's demand.

Defendant's interest and liability to be shewn.

*Illustration.*

A dies leaving B his executor, C his legatee and D a debtor to A's estate. C sues D to compel him to pay his debt in satisfaction of C's legacy. The plaint must show that B has causelessly refused to sue D, or that B and D have colluded for the purpose of defrauding C, or other such circumstances rendering D liable to C.

If the cause of action arose beyond the period ordinarily allowed by any law for instituting the suit, the plaint must shew the ground upon which exemption from such law is claimed.

Grounds of exemption from limitation law.

51. The plaint shall be signed by the plaintiff<sup>1</sup> and his pleader (if any), and shall be verified at the foot by the plaintiff or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case:

Plaints to be signed and verified

Provided that, if the plaintiff is, by reason of absence or for other good cause, unable to sign the plaint, it may be signed by any person duly authorized by him in this behalf.

52. The verification must be to the effect that the same is true to the knowledge of the person making it, except as to matters stated on information and belief, and that as to those matters he believes it to be true.

Contents of verification.

The verification shall be signed by the person making it.

Verification to be signed.

53.<sup>2</sup> The plaint may, at the discretion of the Court,—

- (a) at, or at any time before, the settlement of issues be rejected if it does not disclose a cause of action;

When plaint may be rejected, returned for amendment or amended.

<sup>1</sup> As to corporations and companies, see s. 435, *infra*

<sup>2</sup> S. 53 was substituted for the original section by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s. 9, printed, General Acts, Ed. 1898, Vol. V, p. 232

(Part I.—Of Suits in General. Chapter V.—Of the Institution of Suits. Secs. 54-55.)

(b) at, or any time before, the settlement of issues be returned for amendment within a time to be fixed by the Court, and upon such terms as to the payment of costs occasioned by such amendment as the Court thinks fit, if it—

- (i) is not signed and verified as hereinbefore required,
- (ii) does not state correctly and without prolixity the several particulars hereinbefore required, or contains particulars other than those so required,
- (iii) is wrongly framed by reason of nonjoinder or misjoinder of parties, or joins causes of action which ought not to be joined in the same suit, or
- (iv) is not framed in accordance with the provisions of section 42;

(c) at any time before judgment be amended by the Court upon such terms as to the payment of costs as the Court thinks fit:

Proviso.

Provided that a plaint shall not be amended either by the party to whom it is returned for amendment, or by the Court, so as to convert a suit of one character into a suit of another and inconsistent character.

Attestation  
of amend-  
ment.

When a plaint is amended under this section the amendment shall be attested by the signature of the Judge.

When plaint  
shall be  
rejected.

54. The plaint shall be rejected in the following cases:—

- (a) <sup>1</sup> if the relief sought is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so:
- (b) <sup>1</sup> if the relief sought is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so.
- (c) if the suit appears from the statement in the plaint to be barred by any positive rule of law:
- (d) if the plaint, having been returned for amendment within a time fixed by the Court, is not amended within such time.

Procedure on  
rejecting  
plaint

55. When a plaint is rejected the Judge shall record with his own hand an order to that effect with the reason for such order.

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<sup>1</sup> Cls (a) and (b) of s 54 do not apply to the Chartered High Courts in the exercise of their original civil jurisdiction, see s 638, *infra*

56. The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

When re-  
jection of  
plaint does  
not preclude  
presentation  
of fresh  
plaint

57. The plaint shall be returned to be presented to the proper Court in the following cases.—

When plaint  
shall be re-  
turned to be  
presented to  
proper Court.

(a) if a suit has been instituted in a Court whose grade is lower or higher than that of the Court competent to try it, where such Court exists, or where no option as to the selection of the Court is allowed by law:

(b) if, in a suit relating to immoveable property, but not coming under the proviso to section 16, it appears that no part of such property is situate within the local limits of the jurisdiction of the Court to which the plaint is presented:

(c) if, in any other case, it appears that the cause of action did not arise, and that none of the defendants are dwelling or carrying on business, or personally working for gain, within such local limits.

On returning a plaint the Judge shall, with his own hand, endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reason for returning it.

Procedure  
on returning  
plaint.

58. The plaintiff shall endorse on the plaint, or annex thereto, a memorandum of the documents (if any) which he has produced along with it; and, if the plaint be admitted, shall present as many copies on plain paper of the plaint as there are defendants, unless the Court by reason of the length of the plaint or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements<sup>1</sup> of the nature of the claim made, or of the relief or remedy required, in the suit, in which case he shall present such statements.

Procedure  
on admit-  
ting plaint.

Concise  
statements.

If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, such statements shall show in what capacity the plaintiff or defendant sues or is sued.

The plaintiff may, by leave of the Court, amend such statements so as to make them correspond with the plaint.

The chief ministerial officer of the Court shall sign such memorandum and copies or statements if, on examination, he finds them to be correct

The Court shall also cause the particulars mentioned in section 50 to be entered in a book to be kept for the purpose and called the register of

Register  
of suits.

<sup>1</sup> For forms of concise statements, see Sch. IV, No. 114, *infra*.

(Part I.—Of Suits in General. Chapter V.—Of the Institution of Suits. Secs. 59-63.)

civil suits<sup>1</sup> Such entries shall be numbered in every year according to the order in which the plaint is admitted

Production of document on which plaintiff sues. Delivery of document or copy.

59. If a plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint.

List of other documents.

If he rely on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint.

Statement in case of documents not in his possession or power. Suits on lost negotiable instruments

60. In the case of any such document not in his possession or power, he shall, if possible, state in whose possession or power it is.

61. In case of any suit founded upon a negotiable instrument, if it be proved that the instrument is lost, and if an indemnity be given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may make such decree as it would have made if the plaintiff had produced the instrument in Court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint.

Production of shop-book.

62. If the document on which the plaintiff sues be an entry in a shop-book or other book in his possession or power, the plaintiff shall produce the book at the time of filing the plaint, together with a copy of the entry on which he relies.

Original entry to be marked and returned.

The Court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification; and, after examining and comparing the copy with the original and attesting the copy if found correct, shall return the book to the plaintiff and cause the copy to be filed.

Inadmissibility of document not produced when plaint filed.

63. A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly,

<sup>1</sup> For form of register, see Sch IV, No 116, *infra*, for power of Chartered High Courts to alter that form, see s 664, *infra*. For power to prescribe separate registers for suits between landlords and tenants in the Central Provinces and Bengal, see Central Provinces Tenancy Act, 1898 (XI of 1898) for Bengal, see Bengal Tenancy Act, 1885 (VIII of 1885), Bengal Code, Vol I, Ed 1889. As to further entries in the register, see ss 245, 426, 562 and 581, *infra*.

(Part I.—Of Suits in General. Chapter VI.—Of the Issue and Service of Summons. Secs. 64-67.)

shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

Nothing in this section applies to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by the defendant or handed to a witness merely to refresh his memory.

## CHAPTER VI.<sup>1</sup>

### OF THE ISSUE AND SERVICE OF SUMMONS.

#### *Issue of Summons*<sup>2</sup>

64. When the plaint has been registered, and the copies or concise statements required by section 58 have been filed, a summons<sup>3</sup> may be issued to each defendant to appear and answer the claim on a day to be therein specified,—

- (a) in person, or
- (b) by a pleader duly instructed and able to answer all material questions relating to the suit, or
- (c) by a pleader accompanied by some other person able to answer all such questions.

Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court:

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim.

65. Every such summons shall be accompanied with one of the copies or concise statements mentioned in section 58.

66. If the Court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specified.

If the Court sees reason to require the personal appearance of the plaintiff on the same day, it may make an order for such appearance.

67. No party shall be ordered to appear in person unless he resides—

- (a) within the local limits of the Court's ordinary original jurisdiction,
- or
- (b) without such limits and at a place less than fifty or, where there is railway communication for five-sixths of the distance between

Summons.  
Copy or statement annexed to summons

Court may order defendant or plaintiff to appear in person

No party to be ordered to appear in person unless resident within fifty or, where there is railway, two hundred miles.

<sup>1</sup> This Chapter, except s. 77, extends to Provincial Small Cause Courts, see s. 5 and the second schedule

<sup>2</sup> For the service of foreign summonses in British India, see note to s. 650A, *infra*

<sup>3</sup> For forms of summons, see Sch. IV, Nos. 117, 118 and 119, *infra*

(Part I.—Of Suits in General. Chapter VI.—Of the Issue and Service of Summons. Secs. 68-72)

the place where he resides and the place where the Court is situate, two hundred miles from the court-house.

Summons to be either to settle issues or for final disposal

68. The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly:

Provided that, in every suit heard by Courts of Small Causes, the summons shall be for the final disposal of the suit.<sup>1</sup>

Fixing day for appearance of defendant

69. The day for the appearance of the defendant shall be fixed by the Court with reference to its current business, the place of residence of the defendant and the time necessary for the service of the summons, and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day

What shall be deemed "sufficient time" must be determined with reference to the circumstances of the case

Summons to order defendant to produce documents required by plaintiff or relied on by defendant  
On issue of summons for final disposal, defendant to be directed to produce his witnesses  
Delivery or transmission of summons for service.

70. The summons to appear and answer shall order the defendant to produce any document in his possession or power, containing evidence relating to the merits of the plaintiff's case, or upon which the defendant intends to rely in support of his case.

71. When the summons is for the final disposal of the suit, it shall direct the defendant to produce, on the day fixed for his appearance, the witnesses upon whose evidence he intends to rely in support of his case.

*Service of Summons*<sup>2</sup>

72.<sup>3</sup> (1) If the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall ordinarily be delivered or sent to the proper officer to be served by him or one of his subordinates

(2) The proper officer may be an officer of another Court than that in which the suit is instituted, and, where he is such an officer, the summons may, subject to any rules which the High Court may make in this behalf, be sent to him by post or in such other manner as the Court may direct.

<sup>1</sup> As to suits for recovery of rent in Bengal, see Bengal Tenancy Act, 1885 (VIII of 1885), s 148, cl (c), Bengal Code, Vol I, Ed 1889

<sup>2</sup> As to service of summons in suits against corporations and companies, see s 436, *infra*

<sup>3</sup> S 72 was substituted for the original section by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 10, printed, General Acts, Vol V, Ed 1898, p 232.

(Part I.—Of Suits in General. Chapter VI.—Of the Issue and Service of Summons. Secs 73-79.)

73. Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court <sup>1</sup>

Mode of service.

74. When there are more defendants than one, service of the summons shall be made on each defendant.

Service on several defendants.

Provided that, if the defendants are partners, and the suit relates to a partnership-transaction or to an actionable wrong in respect of which relief is claimable from the firm, the service may be made unless the Court directs otherwise either (a) on one defendant for himself and for the other defendants, or (b) on any person having the management of the business of the partnership at the principal place, within the local limits of the Court's ordinary original civil jurisdiction, of such business.

75. Whenever it may be practicable, the service shall be made on the defendant in person, unless he have an agent empowered to accept the service, in which case service on such agent shall be sufficient.

Service to be on defendant in person when practicable, or on his agent Service on agent by whom defendant carries on business

76. In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons issues, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

For the purpose of this section the master of a ship is the agent of his owner or charterer.

77. In a suit to obtain relief respecting, or compensation for wrong to, immoveable property, if the service cannot be made on the defendant in person, and the defendant have no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

Service on agent in charge, in suits for immoveable property

78. If in any suit the defendant cannot be found and if he have no agent empowered to accept the service of the summons on his behalf, the service may be made on any adult male member of the family of the defendant who is residing with him.

When service may be on male member of defendant's family.

*Explanation.*—A servant is not a member of the family within the meaning of this section.

79. When the serving officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered

Person served to sign acknowledgment.

<sup>1</sup> For power to direct service by registered letter in suits for recovery of rent in Bengal, see Bengal Tenancy Act, 1885 (VIII of 1885), s. 148, cl. (d) and s. 1, Bengal Code, Vol. I, Ed. 1889

(Part I.—Of Suits in General. Chapter VI—Of the Issue and Service of Summons. Secs 80-84.)

or tendered to an acknowledgment of service endorsed on the original summons.

Procedure when defendant refuses to accept service, or cannot be found.

80. If the defendant or other person refuses to sign the acknowledgment,

or if the serving officer cannot find the defendant, and there is no agent empowered to accept the service of the summons on his behalf, nor any other person on whom the service can be made,

the serving officer shall affix a copy of the summons on the outer door of the house in which the defendant ordinarily resides and then return the original to the Court from which it issued, with a return endorsed thereon or annexed thereto stating that he has so affixed the copy and the circumstances under which he did so.

Endorsement of time and manner of service.

81. The serving-officer shall, in all cases in which the summons has been served under section 79, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a return stating the time when and the manner in which the summons was served.

Examination of serving-officer

82. <sup>1</sup> [When a summons is returned under section 80, the Court shall, if the return under that section has not been verified by the affidavit of the serving-officer, and may if it has been so verified, examine the] <sup>2</sup> [serving-officer on oath, or cause him to be so examined by another Court, touching his proceedings], and may make such further enquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

Substituted service.

Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding the service, or that for any other reason the summons cannot be served in the ordinary way,<sup>3</sup> the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the court-house, and also upon some conspicuous part of the house, if any, in which the defendant is known to have last resided, or in such other manner as the Court thinks fit.

Effect of substituted service

83. The service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

When service substituted, time for appearance to be fixed

84. Whenever service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

<sup>1</sup> These words were substituted in s 82 for the first twenty words of the original section by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 11, printed, General Acts, Vol V, Ed 1898, p 232

<sup>2</sup> These words in s 82 were substituted by Act VII of 1888, s 11

<sup>3</sup> See Sch IV, forms 120 and 121, *infra*.

## (Part I.—Of Suits in General. Chapter VI—Of the Issue and Service of Summons. Secs. 85-89)

85. If the defendant resides within the jurisdiction of any Court other than the Court in which the suit is instituted and has no agent resident within the local limits of the jurisdiction of the latter Court empowered to accept the service of the summons, such Court shall send<sup>1</sup> the summons, either by one of its officers or by post, to any Court, not being a High Court, having jurisdiction at the place where the defendant resides, by which it can be conveniently served, and shall fix such time for the appearance of the defendant as the case may require.

Service of summons when defendant resides within jurisdiction of another Court and has no agent to accept service.

The Court to which the summons is sent shall, upon receipt thereof, proceed as if it had been issued by such Court, and shall then return<sup>2</sup> the summons to the Court from which it originally issued, together with the record (if any) made under this paragraph.

86. Whenever any process issued by any Court established beyond the limits of the towns of Calcutta, Madras, Bombay and Rangoon is to be served within any such town, it shall be sent to the Court of Small Causes within whose jurisdiction the process is to be served,

Service, within presidency-towns and Rangoon of process issued by Provincial Courts

and such Court of Small Causes shall deal with such process in the same manner as if the process had been issued by itself,

and shall then return the process to the Court from which it issued.

87. If the defendant be in jail, the summons shall be delivered to the officer in charge of the jail in which the defendant is confined, and such officer shall cause the summons to be served upon the defendant.

Service on defendant in jail

The summons shall be returned to the Court from which it issued, with a statement of the service endorsed thereon and signed by the officer in charge of the jail and by the defendant.

88. If the jail in which the defendant is confined is not in the district in which the suit is instituted, the summons may be sent by post or otherwise to the officer in charge of such jail, and such officer shall cause the summons to be served upon the defendant, and shall return the summons to the Court from which it issued, with a statement of the service endorsed thereon, and signed as provided in section 87.

Procedure if jail be in different district.

89. If the defendant resides out of British India and has no agent in British India empowered to accept the service, the summons shall be addressed to the defendant at the place where he is residing and forwarded to him by post if there be postal communication between such place and the place where the Court is situate.

Service when defendant resides out of British India and has no agent to accept service.

<sup>1</sup> See Sch IV, forms 120 and 121, *infra*

<sup>2</sup> For form for return of summons, see Sch IV No 121, *infra*

## (Part I.—Of Suits in General Chapter VI—Of the Issue and Service of Summons. Secs 90-95.)

Service in  
foreign terri-  
tory through  
British  
Resident  
or Court

90.<sup>1</sup> If there is a British Resident or Agent or a Superintendent appointed by the British Government, or a <sup>2</sup> Court established or continued by the authority of the Governor General in Council, in or for the territory in which the defendant resides, the summons may be sent to such Resident, Agent, Superintendent or Court, by post or otherwise, for the purpose of being served upon the defendant, and, if the Resident, Agent or Superintendent or the Judge of the Court returns the summons with an endorsement under his hand that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be evidence of the service.

Substitution  
of letter for  
summons

91. The Court may, notwithstanding anything hereinbefore contained, substitute for the summons a letter signed by the Judge or such officer as he appoints in this behalf, when the defendant is, in the opinion of the Court, of a rank which entitles him to such mark of consideration.

The letter shall contain all the particulars required to be stated in the summons, and, subject to the provisions contained in section 92, shall be treated in all respects as a summons.

Mode of  
sending such  
letter.

92. When a letter is so substituted for a summons, it may be sent to the defendant by post or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; unless the defendant has an agent empowered to accept service of summons, in which case the letter may be delivered or sent to such agent.

*Service of Process.*

Process  
to be served  
at expense  
of party  
issuing.  
Costs of  
service.

93. Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the Court otherwise directs.

The court-fee leviable for such service shall be levied within a time to be fixed by the Court before the process is issued.

Notices and  
orders in  
writing  
how served.

94. All notices and orders required by this Code to be given to or served on any person shall be in writing, and shall be served in the manner hereinbefore provided for the service of summons.

*Postage.*

Postage.

95. Postage, where chargeable on any notice, summons or letter issued

<sup>1</sup> S 90 was substituted by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 12, printed, General Acts, Vol V, Ed 1898, p 232

<sup>2</sup> For lists of Courts established or continued by the Governor General in Council in foreign territory, see Note to s 650A, *infra*

(Part I.—Of Suits in General Chapter VII—Of the Appearance of the Parties and Consequence of Non-appearance Secs. 96-99.)

under this Code and forwarded by post, and the fee for registering the same, shall be paid within a time to be fixed by the Court before the communication is forwarded:

Provided that the Local Government, with the previous sanction of the Governor General in Council, may remit such postage, or fee, or both, or may prescribe a scale of court-fees to be levied in lieu thereof

## CHAPTER VII<sup>1</sup>

### OF THE APPEARANCE OF THE PARTIES AND CONSEQUENCE OF NON-APPEARANCE.

96. On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the court-house in person or by their respective pleaders, and the suit shall then be heard, unless the hearing be adjourned to a future day fixed by the Court

97. If, on the day so fixed for the defendant to appear and answer, it be found that the summons has not been served upon him in consequence of the failure of the plaintiff to pay the court-fee leviable for such service, the Court may order that the suit be dismissed.

Provided that no such order shall be passed, although the summons has not been served upon the defendant, if, on the day fixed for him to appear and answer, he attends in person or by agent, when he is allowed to appear by agent.

98. If on the day fixed for the defendant to appear and answer, or on any other subsequent day to which the hearing of the suit is adjourned, neither party appears, the suit shall be dismissed unless the Judge, for reasons to be recorded under his hand, otherwise directs.

99. Whenever a suit is dismissed under section 97 or section 98, the plaintiff may (subject to the law of limitation) bring a fresh suit; or if, within the period of thirty days from the date of the order dismissing the suit, he satisfies the Court that there was a sufficient excuse for his not paying the court-fee required within the time allowed for the service of the summons, or for his non-appearance, as the case may be, the Court shall pass an order to set aside the dismissal and appoint a day for proceeding with the suit.

Parties to appear on day fixed in summons for defendant to appear and answer  
Dismissal of suit where summons not served in consequence of plaintiff's failure to pay fee for issuing  
Proviso

If neither party appears, suit to be dismissed.

In such case plaintiff may bring fresh suit, or Court may restore suit to its file.

XV of 1877.

<sup>1</sup> This Chapter extends to Provincial Small Cause Courts, see s 5 and the second schedule

(Part I.—Of Suits in General. Chapter VII.—Of the Appearance of the Parties and Consequence of Non-appearance. Secs. 99A-103.)

Dismissal of suit where plaintiff, after summons returned unserved, fails for a year to apply for fresh summons.

**99A.** If, after a summons has, whether before or after the first day of June, 1882, been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails for a period of one year from such return to apply for the issue of a fresh summons and to satisfy the Court that he has used his best endeavours to discover the residence of the defendant who has not been served, or that such defendant is avoiding service of process, the Court may dismiss the suit as against such defendant.

In such case the plaintiff may (subject to the law of limitation) bring a fresh suit. XV of 1877

Procedure when only plaintiff appears, when summons duly served, when summons not duly served,

**100.** If the plaintiff appears and the defendant does not appear, the procedure shall be as follows:—

when summons served, but not in due time.

- (a) if it is proved that the summons was duly served, the Court may proceed *ex parte*:
- (b) if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant:
- (c) if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant

If it is owing to the plaintiff's default that the summons was not served in sufficient time, the Court shall order him to pay the costs occasioned by such postponement.

Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance. Procedure where defendant only appears.

**101.** If the Court has adjourned the hearing of the suit *ex parte*, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

**102.** If the defendant appears and the plaintiff does not appear, the Court shall dismiss the suit, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

Decree against plaintiff by default bars fresh suit

**103.** When a suit is wholly or partially dismissed under section 102, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal

{Part I—Of Suits in General Chapter VII.—Of the Appearance of the Parties and Consequence of Non-appearance. Secs. 104-108.}

aside; and, if it be proved that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall set aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit

No order shall be made under this section unless the plaintiff has served the defendant with notice in writing of his application.

104. If, on the day fixed for the hearing of a suit against a defendant residing out of British India, who has no agent empowered to accept service of summons, or on any day to which the hearing has been adjourned, the defendant does not appear, the plaintiff may apply to the Court for permission to proceed with his suit, and the Court may direct that the plaintiff be at liberty to proceed with his suit in such manner and subject to such conditions as the Court thinks fit

Procedure where defendant residing out of British India does not appear.

105. If there be more plaintiffs than one, and one or more of them appear, and the others do not appear, the Court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, and pass such order as it thinks fit.

Procedure in case of non-attendance of one or more of several plaintiffs.

106. If there be more defendants than one, and one or more of them appear, and the others do not appear, the suit shall proceed, and the Court shall, at the time of passing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

Procedure in case of non-attendance of one or more of several defendants. Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person.

107. If a plaintiff or defendant, who has been ordered to appear in person under the provisions of section 66 or section 436, does not appear in person, or shew sufficient cause to the satisfaction of the Court for failing so to appear, he shall be subject to all the provisions of the foregoing sections applicable to plaintiffs and defendants, respectively, who do not appear.

*Of Setting aside Decrees ex parte.*

108. In any case in which a decree is passed *ex parte* against a defendant, he may apply to the Court by which the decree was made for an order to set it aside;

Setting aside decree *ex parte* against defendant.

and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall pass an order to set aside the decree upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(Part I.—Of Suits in General. Chapter VII.—Of the Appearance of the Parties and Consequence of Non-appearance Sec. 109. Chapter VIII.—Of Written Statements and Set-off. Secs 110-111)

No decree to be set aside without notice to opposite party.

109. No decree shall be set aside on any such application as aforesaid, unless notice thereof in writing has been served on the opposite party.

## CHAPTER VIII.<sup>1</sup>

### OF WRITTEN STATEMENTS AND SET-OFF.

Written statements.

110. The parties may, at any time before or at the first hearing of the suit, tender written statements<sup>2</sup> of their respective cases, and the Court shall receive such statements and place them on the record

Particulars of set-off to be given in written statement.

111. If in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, and if in such claim of the defendant against the plaintiff both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, tender a written statement containing the particulars of the debt sought to be set-off.

Inquiry.

The Court shall thereupon inquire into the same, and if it finds that the case fulfils the requirements of the former part of this section, and that the amount claimed to be set-off does not exceed the pecuniary limits of its jurisdiction, the Court shall set-off the one debt against the other.

Effect of set-off.

Such set-off shall have the same effect as a plant in a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original and on the cross claim, but it shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

### Illustrations.

(a) A bequeaths Rs 2,000 to B, and appoints C his executor and residuary legatee B dies and D takes out administration to B's effects C pays Rs 1,000 as surety for D. Then D sues C for the legacy C cannot set-off the debt of Rs 1,000 against the legacy, for neither C nor D fills the same character with respect to the legacy as they fill with respect to the payment of the Rs. 1,000.

<sup>1</sup> This Chapter extends to Provincial Small Cause Courts, *see* s 5 and second schedule

<sup>2</sup> (1) For forms of written statements, *see* Sch IV, Nos 29, 88, 107 and 122, *infra*

(2) Except in cases of a set-off under s 111, no written statement may be received by a Presidency Small Cause Court unless required by the Court itself, *see* the Presidency Small Cause Courts Act, 1882 (XV of 1882), printed, *infra*, p 590

(3) In suits for recovery of rent in Bengal, a written statement may not be filed without the leave of the Court, *see* the Bengal Tenancy Act, 1885 (VIII of 1885), s 148 (c), printed, Bengal Code, Vol I, Ed 1889

*(Part I.—Of Suits in General. Chapter VIII.—Of Written Statements and set-off. Secs 112-114)*

(b) A dies intestate and in debt to B. C takes out administration to A's effects, and B buys part of the effects from C. In a suit for the purchase-money by C against B, the latter cannot set-off the debt against the price, for C fills two different characters, one as the vendor to B, in which he sues B, and the other as representative to A.

(c) A sues B on a bill of exchange. B alleges that A has wrongfully neglected to insure B's goods and is liable to him in compensation which he claims to set-off. The amount not being ascertained cannot be set-off.

(d) A sues B on a bill of exchange for Rs 500. B holds a judgment against A for Rs 1,000. The two claims being both definite pecuniary demands may be set-off.

(e) A sues B for compensation on account of trespass. B holds a promissory note for Rs 1,000 from A and claims to set-off that amount against any sum that A may recover in the suit. B may do so, for, as soon as A recovers, both sums are definite pecuniary demands.

(f) A and B sue C for Rs. 1,000. C cannot set-off debt due to him by A alone.

(g) A sues B and C for Rs 1,000. B cannot set-off a debt due to him alone by A.

(h) A owes the partnership-firm of B and C Rs 1,000. B dies leaving C surviving. A sues C for a debt of Rs 1,500 due in his separate character. C may set-off the debt of Rs 1,000.

112. Except as provided in the last preceding section, no written statement shall be received after the first hearing of the suit:

No written statement to be received after first hearing.  
Provisos.

Provided that the Court may at any time require a written statement, or additional written statement, from any of the parties, and fix a time for presenting the same:

Provided also that a written statement, or an additional written statement, may, with the permission of the Court, be received at any time for the purpose of answering written statements so required and presented.

113. If any party from whom a written statement is so required fails to present the same within the time fixed by the Court, the Court may pass a decree against him, or make such order in relation to the suit as it thinks fit.

Procedure when party fails to present written statement called for by Court.  
Frame of written statements.

114. Written statements shall be as brief as the nature of the case admits, and shall not be argumentative, but shall be confined as much as possible to a simple narrative of the facts which the party by whom or on whose behalf the written statement is made believes to be material to the case, and which he either admits or believes he will be able to prove.

Every such statement shall be divided into paragraphs, numbered consecutively, and each paragraph containing as nearly as may be a separate allegation.

(Part I.—Of Suits in General. Chapter VIII.—Of Written Statements and set-off. Secs. 115-116. Chapter IX.—Of the Examination of the Parties by the Court. Secs. 117-118)

Written  
statements  
to be signed  
and verified

115. Written statements shall be signed and verified in the manner hereinbefore provided for signing and verifying plaints,<sup>1</sup> and no written statement shall be received unless it be so signed and verified

Power of  
Court as  
to argument-  
ative, prolix  
or irrelevant  
written  
statement

116. If it appears to the Court that any written statement, whether called for by the Court or spontaneously tendered, is argumentative or prolix, or contains matter irrelevant to the suit, the Court may amend it then and there, or may, by an order to be endorsed thereon, reject the same, or return it to the party by whom it was made for amendment within a time to be fixed by the Court, imposing such terms as to costs or otherwise as the Court thinks fit

Attestation  
of amend-  
ments  
Effect of  
rejection

When any amendment is made under this section the Judge shall attest it by his signature.

When any amendment is made under this section the Judge shall making it shall not present another written statement, unless it be expressly called for or allowed by the Court.

## CHAPTER IX<sup>2</sup>

### OF THE EXAMINATION OF THE PARTIES BY THE COURT.

Ascertain-  
ment whether  
allegations  
in plaint and  
written  
statements  
admitted or  
denied

117. At the first hearing of the suit the Court shall ascertain from the defendant or his pleader whether he admits or denies the allegations of fact made in the plaint, and shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

Oral exam-  
ination of  
party, or  
companion  
of himself or  
his pleader

118. At the first hearing of the suit, or at any subsequent hearing, any party appearing in person or present in Court, or any person able to answer any material questions relating to the suit by whom such party or his pleader is accompanied, may be examined orally by the Court: and the Court may, if it thinks fit, put in the course of such examination questions suggested by either party.

<sup>1</sup> See ss 51 and 52, *supra*

<sup>2</sup> This Chapter, except s 119, extends to Provincial Courts of Small Causes, see s 5 and the second schedule. S 119 does not apply to the Chartered High Courts or to the Punjab Chief Court in the exercise of their original civil jurisdiction, see s 638, *infra*, and the Punjab Courts Act, 1884 (XVIII of 1884), s 16 (2). For Act XVIII of 1884, see the revised edition, as modified up to April 1st, 1891, and published by the Legislative Department.

(Part I.—Of Suits in General. Chapter IX—Of the Examination of the Parties by the Court. Secs. 119-120. Chapter X.—Of Discovery and of the Admission, Inspection, Production, Impounding and Return of Documents. Secs. 121-122)

119. The substance of the examination shall be reduced to writing by the Judge, and shall form part of the record.

Substance of examination to be written.

120. If the pleader of any party who appears by a pleader refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day and direct that such party shall appear in person on such day.

Consequence of refusal or inability of pleader to answer.

If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pass a decree against him, or make such order in relation to the suit as it thinks fit.

## CHAPTER X<sup>1</sup>

### OF DISCOVERY AND OF THE ADMISSION, INSPECTION, PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS.

121.<sup>2</sup> Any party may at any time by leave of the Court deliver through the Court interrogatories<sup>3</sup> in writing for the examination of the opposite party, or, where there are more opposite parties than one, any one or more of such parties, with a note at the foot thereof stating which of such interrogatories each of such persons is required to answer:

Power to deliver interrogatories.

Provided that no party shall deliver more than one set of interrogatories to the same person without the permission of the Court, and that no defendant shall deliver interrogatories for the examination of the plaintiff unless such defendant has previously tendered a written statement and such statement has been received and placed on the record.

122. Interrogatories delivered under section 121 shall be served on the pleader (if any) of the party interrogated, or in the manner hereinbefore provided for the service of summons, and the provisions of sections 79, 80, 81 and 82 shall, in the latter case, apply so far as may be practicable.

Service of interrogatories

<sup>1</sup> This Chapter extends to Provincial Small Cause Courts, *see* s 5 and the second schedule

<sup>2</sup> Ss 121 to 127 and s 129 are not applicable to suits for recovery of rent in Bengal, *see* the Bengal Tenancy Act, 1885 (VIII of 1885), s 148 (a), printed, Bengal Code, Vol I, Ed 1889

<sup>3</sup> For forms, *see* Sch IV, No 123, *infra*.

(Part I.—Of Suits in General. Chapter X.—Of Discovery and of the Admission, Inspection, Production, Impounding and Return of Documents. Secs 123-128.)

Inquiry into propriety of exhibiting interrogatories.

123. The Court, in adjusting the costs of the suit, shall, at the instance of any party, inquire or cause inquiry to be made into the propriety of delivering such interrogatories, and if it thinks that such interrogatories have been delivered unreasonably, vexatiously or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be borne by the party in fault.

Service of interrogatories on officer of corporation or company.

124. If any party to a suit be a body corporate or a joint stock company, whether incorporated or not, or any other body of persons empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply to the Court for an order allowing him to deliver interrogatories to any member or officer of such corporation, company or body, and an order may be made accordingly.

Power to refuse to answer interrogatories as irrelevant, etc

125. Any party called upon to answer interrogatories, whether by himself or by any such member or officer, may refuse to answer any interrogatory on the ground that it is irrelevant, or is not put *bonâ fide* for the purposes of the suit, or that the matter inquired after is not sufficiently material at that stage of the suit, or on any other like ground

Time for filing affidavit in answer.

126. Interrogatories shall be answered by affidavit to be filed in Court within ten days from the service thereof or within such further time as the Judge may allow.

Procedure where party omits to answer sufficiently

127. If any person interrogated omits or refuses to answer, or answers insufficiently, any interrogatory, the party interrogating may apply to the Court for an order requiring him to answer or to answer further, as the case may be. And an order may be made requiring him to answer or to answer further either by affidavit or by *vivâ voce* examination as the Judge may direct:

Provided that the Judge shall not require an answer to any interrogatory which in his opinion need not have been answered under section 125.

Power to demand admission of genuineness of documents.

128. Either party may, by a notice through the Court, within a reasonable time not less than ten days before the hearing, require the other party to admit (saving all just exceptions to the admissibility of such document in evidence) the genuineness of any document material to the suit.

The admission shall also be made in writing signed by the other party, or his pleader and filed in Court

If such notice be not given, no costs of proving such document shall be allowed, unless the Judge otherwise orders.

(Part I.—Of Suits in General. Chapter X.—Of Discovery and of the Admission, Inspection, Production, Impounding and Return of Documents. Secs. 129-133)

If such notice is not complied with within four days after its being served, and the Judge thinks it reasonable that the admission should have been made, the party refusing shall bear the expense of proving such document, whatever may be the result of the suit.

129. The Court may, at any time during the pendency therein of any suit, order any party to the suit to declare by affidavit all the documents which are or have been in his possession or power relating to any matter in question in the suit, and any party to the suit may, at any time before the first hearing, apply to the Court for a like order.

Power to order discovery of document.

Every affidavit made under this section shall specify which, if any, of the documents therein mentioned, the declarant objects to produce, together with the grounds of such objection.

Affidavit in answer to such order.

130. The Court may, at any time during the pendency therein of any suit, order the production by any party thereto of such of the documents in his possession or power relating to any matter in question in such suit or proceeding as the Court thinks right; and the Court may deal with such documents when produced in such manner as appears just.

Power to order production of documents during suit.

131. Any party to a suit may at any time before or at the hearing thereof give notice<sup>1</sup> through the Court to any other party to produce any specified document for the inspection of the party giving such notice or of his pleader, and to permit such party or pleader to take copies thereof.

Notice to produce for inspection documents referred to in plaint, etc  
Consequence of non-compliance with such notice.

No party failing to comply with such notice shall afterwards be at liberty to put any such document in evidence on his behalf in such suit, unless he satisfies the Court that such document relates only to his own title, or that he had some other and sufficient cause for not complying with such notice.

132. The party to whom such notice is given shall, within ten days from the receipt thereof, deliver through the Court to the party giving the same a notice stating a time within three days from such delivery at which the documents, or such of them as he does not object to produce, may be inspected at his pleader's office or some other convenient place, and stating which, if any, of the documents he objects to produce, and on what grounds.

Party receiving such notice to deliver notice when and where inspection may be had.

133. If any party served with notice under section 131 omits to give notice under section 132 of the time for inspection, or objects to give inspection, or names an inconvenient place for inspection, the party desiring it may apply to the Court for an order of inspection.

Application for order of inspection.

<sup>1</sup> For forms, see Sch. IV, No 124, *infra*

(Part I.—Of Suits in General. Chapter X—Of Discovery and of the Admission, Inspection, Production, Impounding and Return of Documents. Secs. 134-137.)

Application  
to be founded  
on affidavit

**134.** Except in the case of documents referred to in the plaint, written statement or affidavit of the party against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit showing (a) of what documents inspection is sought, (b) that the party applying is entitled to inspect them, and (c) that they are in the possession or power of the party against whom the application is made.

Power to  
order issue  
or question  
on which  
right to  
discovery  
depends to be  
first deter-  
mined.

**135.** If the party from whom discovery of any kind or inspection is sought objects to the same or any part thereof, and if the Court is satisfied that the right to such discovery or inspection depends on the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that any such issue or question should be determined before deciding upon the right to the discovery or inspection, the Court may order that the issue or question be determined first and reserve the question as to the discovery or inspection.

Consequences  
of failure  
to answer  
or give  
inspection.

**136.** If any party fails to comply with any order under this Chapter, to answer interrogatories or for discovery, production or inspection, which has been duly served, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not appeared and answered;

and the party interrogating or seeking discovery, production or inspection may apply to the Court for an order to that effect, and the Court may make such order accordingly.

Any party failing to comply with any order under this Chapter, to answer interrogatories or for discovery, production or inspection, which has been served personally upon him, shall also be deemed guilty of an offence under section 188 of the Indian Penal Code<sup>1</sup>

XLV c

Court may  
send for  
papers from  
its own  
records or  
from other  
Courts.

**137.** The Court may of its own accord, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

Every application made under this section shall (unless the Court otherwise directs) be supported by an affidavit of the applicant or his pleader, shewing how the record is material to the suit in which the appli-

<sup>1</sup>Printed, General Acts, Vol I, Ed 1898, p 240

(Part I.—Of Suits in General. Chapter X.—Of Discovery and of the Admission, Inspection, Production, Impounding and Return of Documents. Secs. 138-141)

cation is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

I of 1872

Nothing contained in this section shall be deemed to enable the Court to use in evidence any document which under the Indian Evidence Act, 1872,<sup>1</sup> would be inadmissible in the suit.

138. The parties or their pleaders shall bring with them and have in readiness at the first hearing of the suit, to be produced when called for by the Court, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court at any time before such hearing has ordered to be produced.

Documentary evidence to be in readiness at first hearing.

139. No documentary evidence in the possession or power of any party which should have been, but has not been, produced in accordance with the requirements of section 138 shall be received at any subsequent stage of the proceedings unless good cause be shown to the satisfaction of the Court for the non-production thereof. And the Judge receiving any such evidence shall record his reasons for so doing.

Effect of non-production of documents.

140. The Court shall receive the documents respectively produced by the parties at the first hearing:

Documents to be received by Court.

Provided that the documents produced by each party be accompanied by an accurate list thereof prepared in such form as the High Court may from time to time direct.

The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

Rejection of irrelevant or inadmissible documents.

141.<sup>2</sup> (I) Subject to the provisions of the next following sub-section there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely:—

Endorsements on documents admitted in evidence.

- (a) the number and title of the suit,
- (b) the name of the person producing the document,
- (c) the date on which it was produced, and
- (d) a statement of its having been so admitted,

<sup>1</sup> Printed, General Acts, Vol II, Ed 1898, p 232.

<sup>2</sup> Ss 141, 141A, 142 and 142A were substituted for the original ss 141 and 142 by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 13, printed, General Acts, Vol. V, Ed 1898, p. 232

(Part I.—Of Suits in General. Chapter X—Of Discovery and of the Admission, Inspection, Production, Impounding and Return of Documents. Secs. 141A-143)

and the endorsement shall be signed by the Judge

(2) If a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following section, the particulars aforesaid shall be endorsed on the copy, and the endorsement thereon shall be signed by the Judge

Endorsements on copies of admitted entries in books, accounts, and records.

**141A.**<sup>1</sup> (1) If a document admitted in evidence in the suit is an entry in a shop-book or other account in current use, the party on whose behalf the account is produced may furnish a copy of the entry

(2) If such a document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the Court may require a copy of the entry to be furnished—

(i) where the record, book or account is produced on behalf of a party, then by that party, or

(ii) where the record, book or account is produced in obedience to an order of the Court acting of its own motion, then by either or any party.

(3) When a copy of an entry is furnished under the foregoing provisions of this section, the Court shall, after causing the copy to be examined, compared and attested in manner mentioned in section 62, mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it

Endorsements on documents rejected as inadmissible in evidence.

**142.**<sup>1</sup> When a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clauses (a), (b) and (c) of section 141, sub-section (1), and a statement of its having been rejected, and the endorsement shall be signed by the Judge

Recording of admitted and return of rejected documents.

**142A.**<sup>1</sup> (1) Every document which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under section 141A, shall form part of the record of the suit

(2) Documents not admitted in evidence shall not form part of the record and shall be returned to the parties respectively producing them.

Court may order any document to be impounded.

**143.** Notwithstanding anything contained in <sup>2</sup> [section 62, section 141A, sub-section (3), or section 142A, sub-section (2),] the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit

<sup>1</sup> See second footnote on p 303

<sup>2</sup> This portion of s 143 was substituted for the section as it originally stood by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 14, printed, General Acts, Vol V, p 232

(Part I—Of Suits in General Chapter X—Of Discovery and of the Admission, Inspection, Production, Impounding and Return of Documents. Secs 144-145 Chapter XI—Of the Settlement of Issues Sec. 146)

to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit

144. In suits in which an appeal is not allowed, when the suit has been disposed of, and in suits in which an appeal is allowed, when the time for preferring an appeal from the decree has elapsed, or, if an appeal has been preferred, then after the appeal has been disposed of, any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record, shall, unless the document is impounded under section 143, be entitled to receive back the same :

When document admitted in evidence may be returned

Provided that a document may be returned at any time before either of such events if the person applying for such return delivers to the proper officer a certified copy of such document to be substituted for the original.

When document may be returned before time limited  
Certain documents not to be returned

Provided also that no document shall be returned which, by force of the decree, has become void or useless

On the return of a document which has been admitted in evidence a receipt shall be given by the party receiving it in a receipt book to be kept for the purpose.

Receipt to be given for returned document

145. The provisions herein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

Provisions as to documents applied to material objects

## CHAPTER XI.

### OF THE SETTLEMENT OF ISSUES

146. Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other

Forming of issues.

Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue

Each material proposition affirmed by one party and denied by the other must form the subject of a distinct issue.

Issues are of two kinds: (a) issues of fact, (b) issues of law

At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of facts or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to the Court to depend.

When issues both of law and of fact arise in the same suit, and the Court is of opinion that the case may be disposed of on the issues of law

(Part I.—Of Suits in General. Chapter XI.—Of the Settlement of Issues. Secs. 147-150.)

only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

Nothing in this section requires the Court to frame and record issues when the defendant at the first hearing of the suit makes no defence.

Allegations from which issues may be framed

147. The Court may frame the issues from all or any of the following materials:—

(a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties or persons;

(b) allegations made in the plaint or in the written statements (if any) tendered in the suit, or in answer to interrogatories delivered in the suit;

(c) the contents of documents produced by either party.

Court may examine witnesses or documents before framing issues

148. If the Court be of opinion that the issues cannot be correctly framed without the examination of some person not before the Court, or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, to be fixed by the Court, and may (subject to the rules contained in the Indian Evidence Act<sup>1</sup>) com- I of  
pel the attendance of any person or the production of any document by the person in whose hands it may be, by summons or other process

Power to amend, add and strike out issues

149. The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the controversy between the parties shall be so made or framed.

The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

Questions of fact or law may by agreement be stated in form of issues.

150.<sup>2</sup> When the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing—

(a) that, upon the finding of the Court in the affirmative or the negative of such issue, a sum of money specified in the agreement, or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement;

<sup>1</sup> Printed, General Acts, Vol II, Ed 1898, p 232

<sup>2</sup> See Order XXXIV in the first schedule to the Supreme Court of Judicature Amendment Act (38 & 39 Vict, cap 77)

(Part I.—Of Suits in General. Chapter XI.—Of the Settlement of Issues. Sec. 151. Chapter XII.—Disposal of the Suit at the first Hearing. Secs. 152-154.)

- (b) that upon such finding some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct; or
- (c) that upon such finding one or more of the parties shall do or abstain from doing some particular act specified in the agreement and relating to the matter in dispute.

151. If the Court be satisfied, after making such inquiry as it deems proper,—

- (a) that the agreement was duly executed by the parties,
- (b) that they have a substantial interest in the decision of such question as aforesaid, and
- (c) that the same is fit to be tried and decided,

Court, if satisfied that agreement was executed in good faith, may pronounce judgment.

it may proceed to record and try the issue and state its finding or opinion thereon in the same manner as if the issue had been framed by the Court;

and may, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement;

and, upon the judgment so given, decree shall follow and may be executed in the same way as if the judgment had been pronounced in a contested suit.

## CHAPTER XII.

### DISPOSAL OF THE SUIT AT THE FIRST HEARING.

152. If at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.

If parties not at issue on any question of law or fact.

153. Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or fact, the Court may at once pronounce judgment for or against such defendant and the suit shall proceed only against the other defendants.

If one of several defendants be not at issue with plaintiff

154. When the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided, if the Court be satisfied that no further argument or evidence than the parties can at once supply is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues,

If parties at issue on questions of law or fact.

Court may determine issue,

(Part I.—Of Suits in General Chapter XII.—Disposal of the Suit at the first Hearing Sec 155. Chapter XIII—Of Adjournments Secs 156-157)

and pro-  
nounce  
judgment.

and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit:

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them object.

If the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument as the case requires.

If either  
party fails to  
produce his  
evidence,  
Court may  
pronounce  
judgment  
or adjourn  
suit

155.<sup>1</sup> If the summons has been issued for the final disposal of the suit and either party fails without sufficient cause to produce the evidence on which he relies, the Court may at once pronounce judgment,

or may, if it thinks fit, after framing and recording issues under section 146, adjourn the suit for the production of such evidence as may be necessary to its decision upon such issues

## CHAPTER XIII.<sup>2</sup>

### OF ADJOURNMENTS

Court may  
grant time,  
and adjourn  
hearing.

156. The Court may, if sufficient cause be shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit

Costs of  
adjournment

In all such cases the Court shall fix a day for the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing to be necessary for reasons to be recorded by the Judge with his own hand

Procedure  
if parties  
fail to appear  
on day fixed.

157. If, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dis-

<sup>1</sup> The first paragraph of this section extends to Provincial Small Cause Courts, *see* s 5 and the second schedule

<sup>2</sup> Ch XIII extends to Provincial Small Cause Courts, *see* s 5 and the second schedule.

- (Part I.—Of Suits in General. Chapter XIII.—Of Adjournments.  
*Sec. 158. Chapter XIV.—Of the Summoning and Attendance of  
 Witnesses. Secs. 159-162*)

pose of the suit in one of the modes directed in that behalf by Chapter VII, or make such other order as it thinks fit.

158. If any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith.

Court may proceed notwithstanding either party fails to produce evidence, etc

## CHAPTER XIV.<sup>1</sup>

### OF THE SUMMONING AND ATTENDANCE OF WITNESSES

159. The parties may, after the summons has been delivered <sup>2</sup>[or sent] for service on the defendant, whether it be for the settlement of issues only, or for the final disposal of the suit, obtain, on application to the Court or to such officer as it appoints in this behalf, before the day fixed for such settlement or disposal, as the case may be, summonses<sup>3</sup> to persons whose attendance is required either to give evidence or to produce documents.

Summons to attend to give evidence or produce documents.

160.<sup>4</sup> The party applying for a summons shall, before the summons is granted and within a period to be fixed by the Court, pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance.

Expenses of witnesses to be paid into Court on applying for summons.

If the Court be subordinate to a High Court regard shall be had, in fixing the scale of such expenses, to the rules (if any) laid down by competent authority.

Scale of expenses.

161. The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

Tender of expenses to witness

162. If it appear to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in pay-

Procedure where insufficient sum paid in.

<sup>1</sup> This Chapter extends to Provincial Small Cause Courts, *see* s 5 and the second schedule. The Chapter applies to all persons required to give evidence to produce documents in any proceeding under the Code, *see* s. 650, *infra*.

<sup>2</sup> These words in s 159 were inserted by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 15, printed, General Acts, Vol V, Ed 1898, p 232.

<sup>3</sup> For forms, *see* Sch IV, Nos 125 and 126, *infra*.

<sup>4</sup> This section (160) does not apply to the Chartered High Courts in the exercise of their original civil jurisdiction, *see* s 638, *infra*.

## (Part I.—Of Suits in General. Chapter XIV.—Of the Summoning and Attendance of Witnesses. Secs. 163-167)

ment, may order such sum to be levied by attachment and sale of the moveable property of the party obtaining the summons; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

Expenses if  
witnesses  
detained  
more than  
one day.

If it be necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the moveable property of the party at whose instance he was summoned, or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

Time, place  
and purpose  
of attendance  
to be spe-  
cified in  
summons

163. Every summons<sup>1</sup> for the attendance of a person to give evidence or produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document which the person summoned is called on to produce shall be described in the summons with reasonable accuracy

Summons  
to produce  
document.

164. Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he cause such document to be produced instead of attending personally to produce the same.

Power to  
require  
persons  
present in  
Court  
to give  
evidence

165. Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his actual possession or power.

Summons  
how served

166. Every summons to a person to give evidence or produce a document shall be served as nearly as may be in manner hereinbefore prescribed for the service of summons on the defendant, and the rules contained in Chapter VI as to proof of service shall apply in the case of all summonses served under this section.

Time for  
serving  
summons

167. The service shall in all cases be made a sufficient time, before the time specified in the summons for the attendance of the person summoned,

<sup>1</sup> For forms, see Sch IV, Nos 125 and 126, *infra*

(Part I—Of Suits in General. Chapter XIV.—Of the Summoning and Attendance of Witnesses. Secs. 168-170.)

to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

168. If the serving-officer certify to the Court that the summons for the attendance of a person, either to give evidence or to produce a document, cannot be served, the Court <sup>1</sup>[shall, if the certificate of the serving-officer has not been verified by affidavit, and may if it has been so verified, examine the serving-officer on oath, or cause him to be so examined by another Court,] touching the non-service:

Attachment  
of property  
of abscond-  
ing witness

and upon being satisfied that such evidence or production is material, and that the person for whose attendance the summons has been issued is absconding or keeping out of the way for the purpose of avoiding the service of the summons, may issue a proclamation requiring him to attend to give evidence, or produce the document, at a time and place to be named therein, and a copy of such proclamation shall be affixed on the outer door of the house in which he ordinarily resides.

If he does not attend at the time and place named in such proclamation, the Court may in its discretion, at the instance of the party on whose application the summons was issued, make an order for the attachment of the property of the person whose attendance is required, to such amount as the Court thinks fit, not exceeding the amount of the costs of attachment and of the fine which may be imposed under section 170;

Provided that no Court of Small Causes shall make an order for the attachment of immoveable property

169. If, on the attachment of his property, such person appears and satisfies the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

If witness  
appears, at-  
tachment  
may be with-  
drawn

170. If such person does not appear, or, appearing, fails to satisfy the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court may impose upon him such fine not exceeding five hundred rupees as the Court thinks fit, having regard to his condition in life and all the circumstances of the case, and may order the property attached, or any part thereof, to be sold for

Procedure if  
witness fails  
to appear

<sup>1</sup> These words in s 168 were substituted for the original words by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 16, printed, General Acts, Vol V, Ed 1893, p 232

(Part I.—Of Suits in General. Chapter XIV.—Of the Summoning and Attendance of Witnesses. Secs. 171-174.)

the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of the said fine, if any:

Provided that, if the person whose attendance is required pays into Court the costs and fine as aforesaid, the Court shall order the property to be released from attachment

Court may  
of its own  
accord  
summon as  
witnesses  
strangers to  
suit

171. Subject to the rules of this Code as to attendance and appearance and to the provisions of the Indian Evidence Act, 1872,<sup>1</sup> if the Court at any time thinks it necessary to examine any person other than a party to the suit, and not named as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document I of 1872.

Duty of  
persons  
summoned  
to give evi-  
dence or  
produce  
document

172. Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit must attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document must either attend to produce it, or cause it to be produced, at such time and place

When they  
may depart.

173. No person so summoned and attending shall depart unless and until (a) he has been examined or has produced the document and the Court has risen, or (b) he has obtained the Court's leave to depart

Consequences  
of failure to  
comply with  
summons

174. If any person on whom a summons to give evidence or produce a document has been served fails to comply with the summons, or if any person so summoned and attending departs in contravention of section 173, the Court may order him to be arrested and brought before the Court.

Provided that no such order shall be made when the Court has reason to believe that the person so failing had a lawful excuse for such failure.

When any person so brought before the Court fails to satisfy it that he had a lawful excuse for not complying with the summons, the Court may sentence him to fine not exceeding five hundred rupees

*Explanation*—Non-payment or non-tender of a sum sufficient to defray the expenses mentioned in section 160 shall be deemed a lawful excuse within the meaning of this section.

Procedure  
when witness  
apprehended  
cannot give  
evidence or  
produce  
documents

If any person so apprehended and brought before the Court cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his

<sup>1</sup> Printed, General Acts, Vol II, Ed 1898, p 232

(Part I.—Of Suits in General. Chapter XIV.—Of the Summoning and Attendance of Witnesses. Secs. 175-178 Chapter XV.—Of the Hearing of the Suit and Examination of Witnesses. Sec. 179.)

appearance at such time and place as it thinks fit, and, on such bail or security being given, may release him.

175. If any person so failing to comply with a summons absconds or keeps out of the way, so that he cannot be apprehended and brought before the Court, the provisions of sections 168, 169 and 170 shall, *mutatis mutandis*, apply.

Procedure when witness absconds.

176. No one shall be bound to attend in person to give evidence or to be examined in Court unless he resides—

Persons bound to attend in person.

(a) within the local limits of its ordinary original jurisdiction, or

(b) without such limits and at a place less than fifty or (where there is railway communication for five-sixths of the distance between the place where he resides and the place where the Court is situate) two hundred miles distance from the court-house.

177. If any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his actual possession or power, the Court may in its discretion either pass a decree against him, or make such order in relation to the suit as the Court thinks fit.

Consequence of refusal of party to give evidence when called on by Court

178. Whenever any party to a suit is required to give evidence or to produce a document, the rules as to witnesses contained in this Code shall apply to him so far as they are applicable

Rules as to witnesses to apply to parties summoned

## CHAPTER XV.<sup>1</sup>

### OF THE HEARING OF THE SUIT AND EXAMINATION OF WITNESSES.

179. On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

Statement and production of evidence by party having right to begin.

*Explanation.*—The plaintiff has the right to begin unless where the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

Rules as to right to begin.

<sup>1</sup> This Chapter, except ss 182 to 188 (both inclusive), extends to Provincial Small Cause Courts, see s 5 and the second schedule

Ss 182 to 185 (both inclusive), 187, 189, 190, 191 and 192 (so far as they relate to the manner of taking evidence), do not apply to the Chartered High Courts or to the Punjab Chief Court in the exercise of original civil jurisdiction, see s 638, *infra*, and the Punjab Courts Act, 1884 (XVIII of 1884), s 16 (2), in the revised edition, as modified up to the 1st April, 1891, published by the Legislative Department

The provisions of the Chapter relating to the witnesses apply to all persons required to give evidence or to produce documents in any proceeding under the Code, see s 650, *infra*

## (Part I.—Of Suits in General. Chapter XV.—Of the Hearing of the Suit and Examination of Witnesses. Secs. 180-182)

Statement  
and produc-  
tion of  
evidence by  
other party.

Reply by  
party begin-  
ning

180. <sup>1</sup>[The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case.

The party beginning may then reply generally on the whole case ]

Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party. In the latter case the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning, but the party beginning will then be entitled to reply generally on the whole case.

Witnesses  
to be exam-  
ined in  
open Court.

181. <sup>2</sup> The evidence of the witnesses in attendance shall be taken orally in open Court in the presence, and under the personal direction and superintendence, of the Judge

How evi-  
dence shall

182. <sup>23</sup> In cases in which an appeal is allowed, the evidence of such

<sup>1</sup> The first two paragraphs of s 180 were substituted for the original paragraphs by the Punjab Laws Act Amendment Act, 1895 (VII of 1895), s 2, printed, General Acts, Vol VI

<sup>2</sup> In Oudh, substitute the following section for ss 181—190 --

"On the day appointed for the hearing of the suit, or on some other day to which the hearing may be adjourned, the evidence of the witnesses in attendance shall be taken orally in open Court in the presence and hearing and under the personal direction and superintendence of the Judge

"A note of the essential points of the evidence of each witness is to be taken at the time, and in the course of oral examination, by the officer who tries the case, in his own language, or in English if he is sufficiently acquainted with that language, and such note shall be filed and shall form part of the record of the case

"If the evidence be taken down in a different language from that in which it has been given, and the witness does not understand the language in which it is taken down, the witness may require his deposition as taken down to be interpreted to him in the language in which it was given

"It shall be in the discretion of the Court to take down, or cause to be taken down, any particular question and answer, if there appear any special reason for so doing, or any party or his pleader requires it

"If any question put to a witness be objected to by either of the parties or their pleaders, and the Court allow the same to be put, the question and the answer shall be taken down, and the objection and the name of the party making it shall be noticed in taking down the depositions, together with the decision of the Court upon the objection

"The Court shall record such remarks as it may think material respecting the demeanour of the witness while under examination

"If the Judge be prevented from making a note as above required, he shall record the reason of his inability to do so and shall cause such note to be made in writing from his dictation in open Court, and shall sign the same and such note shall form part of the record" See Oudh Laws Act, 1876 (XVIII of 1876), s 19, printed, North-Western Provinces and Oudh Code, Ed 1892, p 320 and *supra*, s 3

<sup>3</sup> In the Central Provinces substitute the following for s 182 --

"A note of the essential points of the evidence of each witness shall be made at the time and in the course of oral examination, by the Judge, in his own language, or in English if he is sufficiently acquainted with that language, and such note shall be filed with, and form part of, the record of the case" See the Central Provinces Laws Act, 1879 (II of 1879), s 2, printed, Central Provinces Code, Ed 1891, p 93, and *supra*, s 3.

(Part I—Of Suits in General. Chapter XV.—Of the Hearing of the Suit and Examination of Witnesses. Secs. 183-185A)

witness shall be taken down in writing, in the language of the Court,<sup>1</sup> by or in the presence and under the personal direction and superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over in the presence of the Judge and of the witness, and also in the presence of the parties or their pleaders, and the Judge shall, if necessary, correct the same and shall sign it.

be taken in  
appealable  
cases

183.<sup>2</sup> If the evidence is taken down under section 182 in a language different from that in which it was given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it was given.

When de-  
position to be  
interpreted

184.<sup>23</sup> In cases in which the evidence is not taken down in writing by the Judge, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record

Memoran-  
dum when  
evidence not  
taken down  
by Judge

185.<sup>23</sup> Where English is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such as appear by pleaders, do not object to have such evidence as is given in English taken down in English, the Judge may so take it down with his own hand

When evi-  
dence may be  
taken in  
in English

185A.<sup>4</sup> (1) The Local Government may, by notification in the official Gazette direct,<sup>5</sup> with respect to any Judge specified in the notification, or falling under a description set forth therein, that evidence in cases in which an appeal is allowed shall, instead of being taken down in the manner prescribed in the foregoing sections, be taken down by him with his own hand in the English language

Power for  
Local Gov-  
ernment  
to require  
evidence to  
be recorded  
in English

(2) Where a Judge is prevented by any sufficient reason from complying with a direction under sub-section (1), he shall record the reason and cause the evidence to be taken down in writing from his dictation in open Court.

(3) Evidence taken down under sub-section (1) or sub-section (2) shall be in the form mentioned in section 182, and be read over and signed, and, as occasion may require, interpreted and corrected, as if it were evidence taken down under that section.

<sup>1</sup> As regards Lower Burma, see the Lower Burma Courts Act, 1889 (XI of 1889), s. 16, printed, Burma Code, Ed 1889, p. 310

<sup>2</sup> See the second footnote on preceding page

<sup>3</sup> Ss. 184 and 185 are repealed in the Central Provinces, see the Central Provinces Laws Act, 1879 (II of 1879), s. 2, printed, Central Provinces Code, Ed 1891, p. 93, and *supra*, s. 3

<sup>4</sup> S. 185A was inserted by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s. 17, printed, General Acts, Vol V, Ed 1898, p. 232

<sup>5</sup> For direction under this section regarding Burma, see Notification No. 105, Burma Gazette, 1897, Pt I, p. 127

(Part I—Of Suits in General Chapter XV—Of the Hearing of the Suit and Examination of Witnesses. Secs 186-191)

(4) The Local Government may, by notification in the official Gazette, revoke or vary a direction notified under sub-section (1).

Any particular question and answer may be taken down

186.<sup>1</sup> The Court may of its own motion or on the application of any party or his pleader, take down, or cause to be taken down, any particular question and answer, or any objection to any question, if there appear any special reason for so doing

Questions objected to and allowed by Court

187.<sup>1</sup> If any question put to a witness be objected to by a party or his pleader, and the Court allows the same to be put, the Judge shall take down the question, the answer, the objection and the name of the person making it, together with the decision of the Court thereon

Remarks on demeanour of witnesses.

188.<sup>1</sup> The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

Memorandum of evidence in unappealable cases

189.<sup>1, 2, 3, 4</sup> In cases in which an appeal is not allowed, it shall not be necessary to take down the evidence of the witnesses in writing at length; but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record

Judge unable to make such memorandum to record reasons of his inability

190.<sup>1, 5</sup> If the Judge be rendered unable to make a memorandum as above required by this Chapter, he shall cause the reason of such inability to be recorded, and shall cause the memorandum to be made in writing from his dictation in open Court

Every memorandum so made shall form part of the record

Power to deal with evidence

191.<sup>5, 6</sup> (1) Where the Judge taking down any evidence, or causing any memorandum to be made, under this Chapter is prevented by death,

<sup>1</sup> See second footnote on p 314, *supra*

<sup>2</sup> S 189 is repealed in the Central Provinces, see the Central Provinces Laws Act, 1879 (II of 1879), s 2, printed, Central Provinces Code, Ed 1891, p 93, and *supra*, s 3

<sup>3</sup> S 189 is applicable in suits for recovery of rent in Bengal whether an appeal is allowed or not, see the Bengal Tenancy Act, 1885 (VIII of 1885), s 148 (f), printed Bengal Code, Vol I, Ed 1889, p 557

<sup>4</sup> For power to direct that evidence in suits between landlord and tenant in agricultural villages in Ajmere and Merwara be taken in the form prescribed by s 189, see the Ajmere Courts Regulation, 1877 (I of 1877), s 29, printed, Ajmere Code, Ed 1893, p 147, and *supra*, s 3

<sup>5</sup> In the Central Provinces substitute the following for ss 190 and 191 —

“190 If the Judge be prevented from making a note as above required, he shall record the reason of his inability to do so, and shall cause such note to be made in writing from his dictation in open Court, and shall sign the same, and such note shall form part of the record

“191 When the Judge making a note of the evidence, or causing one to be made as above required dies or is removed from the Court before the conclusion of the suit, his successor may, if he thinks fit, deal with such note as if he himself had made it or caused it to be made” See the Central Provinces Laws Act, 1879 (II of 1879), s 2, printed, Central Provinces Code, Ed 1891, p 93, and *supra*, s 3

<sup>6</sup> S 191 as it now stands was enacted by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 18, printed, General Acts, Vol V, Ed 1898, p 232

(Part I—Of Suits in General Chapter XV—Of the Hearing of the Suit and Examination of Witnesses. Secs 192-193. Chapter XVI—Of Affidavits Sec 194)

transfer or other cause from concluding the trial of the suit, any successor to such Judge may deal with such evidence or memorandum as if he himself had taken it down or caused it to be made, and proceed with the suit from the stage at which his predecessor left it

taken down  
by another  
Judge

(2) The provisions of sub-section (1) shall apply, so far as they can be made applicable, to a suit transferred under section 25.

Provided that a Court transferring a suit under that section may, if it thinks fit, direct that the Court to which the suit is transferred shall recall all or any of the witnesses who have been examined and take their evidence afresh

192. If a witness be about to leave the jurisdiction of the Court, or if other sufficient cause be shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of either party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided

Power to  
examine  
witness im-  
mediately

Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and may then be read at any hearing of the suit

Court may  
recall and  
examine  
witness

193. The Court may at any stage of the suit recall any witness who has been examined and who has not departed in accordance with section 173, and may (subject to the provisions of the Indian Evidence Act, 1872<sup>1</sup>), put such questions to him as the Court thinks fit

I of 1872

<sup>2</sup> [A Court continuing a suit under section 191 may re-call and re-examine a witness who has departed in accordance with section 173.]

## CHAPTER XVI

### OF AFFIDAVITS

194. Any Court of first instance and any appellate Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable:

Power to  
order any  
point to be  
proved by  
affidavit.

<sup>1</sup> Printed, General Acts, Vol II, p 232

<sup>2</sup> This paragraph was added to s 193 by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 29, printed, General Acts, Vol V, Ed 1898, p 232.

(Part I.—Of Suits in General. Chapter XVI.—Of Affidavits. Secs. 195-197. Chapter XVII.—Of Judgment and Decree. Sec. 198)

Provided that where it appears to the Court that either party *bond fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

Power to  
order attend-  
ance of  
declarant  
for cross-ex-  
amination

195. Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the declarant.

Such attendance shall be in Court unless the declarant is exempted under this Code<sup>1</sup> from personal appearance in Court, or the Court otherwise directs.

Matters to  
which affi-  
davits shall  
be confined

196. Affidavits shall be confined to such facts as the declarant is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted, provided that reasonable grounds thereof be set forth.

The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party producing the same.

Oath of  
declarant by  
whom to be  
adminis-  
tered.

197. In the case of any affidavit under this Code—

- (a) any Court or Magistrate, or
- (b) any officer whom a High Court may appoint in this behalf, or
- (c) any officer appointed by any other Court which the Local Govern-  
ment has generally or specially empowered<sup>2</sup> in this behalf,

may administer the oath of the declarant.

## CHAPTER XVII.<sup>3</sup>

### OF JUDGMENT AND DECREE

Judgment  
when pro-  
nounced

198. The Court, after the evidence has been duly taken and the parties have been heard either in person or by their respective pleaders or recognized agents, shall pronounce judgment in open Court, either at once or on

<sup>1</sup> See ss 640 and 641, *infra*

<sup>2</sup> For notifications conferring such powers in—

(1) Assam see Assam List of Local Rules and Orders, Ed 1893 p 191;

(2) Bombay see Bombay List of Local Rules and Orders, Ed 1896, Vol I, p 396,

(3) Burma see Burma Rules Manual, Ed 1897, p 110

<sup>3</sup> This Chapter, except ss 204, 207 and 211 to 215 (both inclusive), extends to Provincial Small Cause Courts, see s 5 and the second schedule

Ss 198 and 200 to 204 (both inclusive) do not apply to the Punjab Chief Court in the exercise of its original civil jurisdiction, see the Punjab Courts Act, 1884 (XVIII of 1884), s. 16 (2), published by the Legislative Department, as modified up to 1st May, 1891

Ss 198 to 206 (both inclusive) do not apply to the Chartered High Courts in the exercise of their original civil jurisdiction, see s 638, *infra*

## (Part I.—Of Suits in General Chapter XVII.—Of Judgment and Decree Secs 199-206)

some future day, of which due notice shall be given to the parties or their pleaders.

199. A Judge may pronounce a judgment written by his predecessor but not pronounced.

Power to pronounce judgment written by Judge's predecessor

200. The judgment shall be written in the language of the Court, or in English, or in the Judge's mother-tongue.

Language of judgment.

201. Whenever the judgment is written in any language other than that of the Court, the judgment shall, if any of the parties so require, be translated into the language of the Court, and the translation shall also be signed by the Judge or such officer as he appoints in this behalf.

Translation of judgment.

202. The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it, and shall not be altered or added to, save to correct verbal errors or to supply some accidental defect not affecting a material part of the case, or on review.

Judgment to be dated and signed

203. The judgments of the Courts of Small Causes need not contain more than the points for determination and the decision thereupon

Judgments of Small Cause Courts Judgments of other Courts

The judgments of all other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision

204. In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons thereof, upon each separate issue, unless the finding upon any one or more of the issues be sufficient for the decision of the suit.

Court to state its decision on each issue Exception

205. The decree shall bear date the day on which the judgment was pronounced; and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.

Date of decree

206. The decree must agree with the judgment: it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claims, as stated in the register,<sup>1</sup> and shall specify clearly the relief granted or other determination of the suit.<sup>2</sup>

Contents of decree.

The decree shall also state the amount of costs incurred in the suit, and by what parties and in what proportions such costs are to be paid.

If the decree is found to be at variance with the judgment, or if any clerical or arithmetical error be found in the decree, the Court shall, of its

Power to amend decree.

<sup>1</sup> See s 58, *infra*

<sup>2</sup> As to decrees for enhancement of rent and decrees for ejectment in Bengal, see the Bengal Tenancy Act, 1885 (VIII of 1885), ss 154, 155, and s 1, printed, Bengal Code, Vol I, Ed 1889, p 559

own motion or on that of any of the parties, amend the decree so as to bring it into conformity with the judgment or to correct such error:

Provided that reasonable notice has been given to the parties or their pleaders of the proposed amendment

Decree for  
recovery of  
immoveable  
property

207. When the subject-matter of the suit is immoveable property, and such property is identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.

Decree for  
delivery of  
moveable  
property

208. When the suit is for moveable property, if the decree be for the delivery of such property, it shall also state the amount of money to be paid as an alternative if delivery cannot be had

Decrees for  
payment of  
money may  
order certain  
interest to be  
paid on prin-  
cipal sum  
adjudged

209. <sup>1</sup> [When a decree is for the payment of money,] the Court may, in the decree,<sup>2</sup> order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit

<sup>3</sup> [Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie]

Decree may  
direct pay-  
ment by in-  
stalments

210. In all decrees for the payment of money the Court may for any sufficient reason order that the amount shall be paid by instalments, with or without interest

Order, after  
decree, for  
payment by  
instalments

And after the passing of any such decree the Court may, on the application<sup>4</sup> of the judgment-debtor and with the consent of the decree-holder, order that the amount decreed be paid by instalments on such terms as to the payment of interest, the attachment of the property of the defendant, or the taking of security from him, or otherwise, as it thinks fit.

Save as provided in this section and section 206, no decree shall be altered at the request of parties.

<sup>1</sup> These words in s 209 were substituted for the words "*when the suit is for a sum of money due to plaintiff*" by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s. 20 (1), printed, General Acts, Vol V, Ed 1898, p 232

<sup>2</sup> For forms of decree, see Sch IV, No 127 *infra*

<sup>3</sup> This paragraph of s 209 was added by Act VII of 1888, s 20 (2), printed, General Acts, Vol V, Ed 1898, p 232.

<sup>4</sup> As to limitation in the case of such applications, see the Indian Limitation Act, 1877 (XV of 1877), Sch II, art 175, printed, General Acts, Vol III, Ed 1898, p 75

(Part I.—Of Suits in General. Chapter XVII.—Of Judgment and Decree. Secs. 211-213)

211. When the suit is for the recovery of possession of immoveable property yielding rent or other profit, the Court may provide in the decree for the payment of rent or mesne profits in respect of such property from the institution of the suit until the delivery of possession to the party in whose favour the decree is made, or until the expiration of three years from the date of the decree (whichever event first occurs), with interest thereupon at such rate as the Court thinks fit.

In suits for land Court may decree payment of mesne profits with interest

*Explanation.*—"Mesne profits" of property mean those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received, therefrom, together with interest on such profits.

212. When the suit is for the recovery of possession of immoveable property and for mesne profits which have accrued on the property during a period prior to the institution of the suit, and the amount of such profits is disputed, the Court may either determine the amount by the decree itself, or may pass a decree for the property and direct an inquiry into the amount of mesne profits, and dispose of the same on further orders.

Court may determine amount of mesne profits prior to suit, or may reserve inquiry

213. When the suit is for an account of any property and for its due administration under the decree of the Court, the Court, before making the decree,<sup>1</sup> shall order <sup>1</sup> such accounts and inquiries to be taken and made, and give such other directions, as it thinks fit

Administration suit

<sup>2</sup> In the administration by the Court of the property of any person who dies after this Code comes into force, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities proveable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being with respect to the estates of persons adjudged insolvent; and all persons who in any such case would be entitled to be paid out of such property may come in under the decree for its administration, and make such claims against the same as they may respectively be entitled to by virtue of this Code \* \* \* \* \*

<sup>1</sup> For forms of decree and order, see Sch. IV, Nos. 130 and 131, *infra*

<sup>2</sup> Cf. the Supreme Court of Judicature Amendment Act, 1875 (38 & 39 Vict., c. 77), s. 10

<sup>3</sup> The rest of s. 213 was repealed by the Indian Contract Act (1872) Amendment Act, 1886 (IV of 1886), s. 2, printed, General Acts, Vol. V, Ed. 1898, p. 51

## (Part I.—Of Suits in General. Chapter XVII—Of Judgment and Decree Secs. 214-217)

Suit to enforce right of pre-emption

214. When the suit is to enforce a right of pre-emption in respect of a particular sale of property, and the Court finds for the plaintiff, if the amount of purchase-money has not been paid into Court, the decree shall specify a day on or before which it shall be so paid, and shall declare that on payment of such purchase-money, together with the costs (if any) decreed against him, the plaintiff shall obtain possession of the property, but that if such money and costs are not so paid the suit shall stand dismissed with costs.

Suit for dissolution of partnership.

215. When the suit is for the dissolution of a partnership, the Court, before making its decree,<sup>1</sup> may pass an order fixing the day on which the partnership shall stand dissolved, and directing such accounts to be taken and other acts to be done as it thinks fit.

Suit for account between principal and agent

215A. When a suit is for an account of pecuniary transactions between a principal and agent, and in all other suits not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before making its decree, pass an order directing such accounts to be taken as it thinks fit.

Decree when set-off is allowed.

216. <sup>2</sup> [If the defendant has been allowed a set-off against the claim of the plaintiff,] the decree shall state what amount is due to the plaintiff and what amount (if any) is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party

Effect of decree as to sum awarded to defendant.

The decree of the Court, with respect to any sum awarded to the defendant, shall have the same effect, and be subject to the same rules in respect of appeal or otherwise, as if such sum had been claimed by the defendant in a separate suit against the plaintiff.

<sup>3</sup> [The provisions of this section shall apply whether the set-off is admissible under section 111 or otherwise.]

Certified copies of judgment and decree to be furnished.

217. Certified copies of the judgment and decree shall be furnished to the parties on application to the Court, and at their expense.

<sup>1</sup> For forms of decree and order, see Schedule IV, Nos 132 and 133, *infra*

<sup>2</sup> These words in s 216 were substituted for the original words by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 21 (1), printed, General Acts, Vol V, Ed 1898, p 232

<sup>3</sup> The last paragraph of s 216 was added by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 21 (2), printed, General Acts, Vol V, Ed 1898

(Part I -Of Suits in General. Chapter XVIII.—Of Costs. Secs. 218-222 Chapter XIX.—Of the Execution of Decrees. Sec 223.)

CHAPTER XVIII<sup>1</sup>

## OF COSTS.

218. When disposing of any application under this Code, the Court may give to either party the costs, etc., of such application, or may reserve the consideration of such costs for any future stage of the proceedings.

Cost of applications.

219. The judgment shall direct by whom the costs of each party are to be paid, whether by himself or by any other party to the suit, and whether in whole or in what part or proportion.

Judgment to direct by whom costs to be paid

220. The Court shall have full power to give and apportion costs of every application and suit in any manner it thinks fit, and the fact that the Court has no jurisdiction to try the case is no bar to the exercise of such power:

Power of Court as to costs

Provided that, if the Court directs that the costs of any application or suit shall not follow the event, the Court shall state its reasons in writing.

Every order relating to costs made under this Code and not forming part of a decree may be executed as if it were a decree for money.

221. The Court may direct that the costs payable to one party by another shall be set-off against a sum which is admitted or is found in the suit to be due from the former to the latter.

Costs may be set-off against sum admitted or found to be due.

222. The Court may give interest on costs at any rate not exceeding six per cent. per annum, and may direct that costs, with or without interest, be paid out of, or charged upon, the subject-matter of the suit

Interest on costs Payment of costs out of subject-matter.

CHAPTER XIX<sup>2</sup>.

## OF THE EXECUTION OF DECREES.

*A.—Of the Court<sup>3</sup> by which Decrees may be executed.*

<sup>4</sup> 223. A decree may be executed either by the Court which passed it or by the Court to which it is sent for execution under the provisions hereinafter contained.

Court by which decree may be executed

<sup>1</sup> Thus Chapter, except ss 218 and 219, extends to Provincial Small Cause Courts, see s. 5 and the second schedule.

<sup>2</sup> The rules contained in this Chapter apply to the execution of any judicial process for arrest, sale or payment, see s 649, *infra*

<sup>3</sup> For the extended meaning of "Court" in this Chapter, see s 649, paragraph 2, *infra*.

<sup>4</sup> Sections 223 to 229 (both inclusive) extend to Provincial Small Cause Courts, see s. 5, and the second schedule

(Part I.—Of Suits in General. Chapter XIX.—Of the Execution of Decrees. Sec. 223)

The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court,—

- (a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court,
- or
- (b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or
- (c) If the decree directs the sale of immoveable property situate outside the local limits of the jurisdiction of the Court which passed it,
- or
- (d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court

The Court which passed a decree may of its own motion send it for execution to any Court subordinate thereto

The Court to which a decree is sent under this section for execution shall certify to the Court which passed it the fact of such execution, or, where the former Court fails to execute the same, the circumstances attending such failure.

If the decree has been passed<sup>1</sup> [in a suit of which the value as set forth in the plaint did not exceed two thousand rupees and which, as regards its subject-matter, is not excepted by the law for the time being in force from the cognizance of either a Presidency or a Provincial Court of Small Causes,] and the Court which passed it wishes it to be executed in Calcutta, Madras, Bombay or Rangoon, such Court may send to the Court of Small Causes in Calcutta, Madras, Bombay or Rangoon, as the case may be, the copies and certificate, respectively mentioned in clauses (a), (b) and (c) of section 224; and such Court of Small Causes shall thereupon execute the decree as if it had been passed by itself.

If the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed such decree, such Court shall send the same directly to the former Court. But, if the Court to which the decree is to be sent for execution is situate in a different district,

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<sup>1</sup> These words in s 223 were substituted by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 22, printed, General Acts, Vol V, Ed 1898, p 232

the Court which passed it shall send it to the District Court of the district in which the decree is to be executed.

224.<sup>1</sup> The Court sending a decree for execution under section 223 shall send—

- (a) a copy<sup>2</sup> of the decree;
- (b) a certificate<sup>3</sup> setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unexecuted; and
- (c) a copy of any order for the execution of the decree, and, if no such order has been made, a certificate to that effect.

Procedure when Court desires that its own decree shall be executed by another Court.

225. The Court to which a decree is so sent shall cause such copies and certificate to be filed, without any further proof of the decree or order for execution, or of the copies thereof, or of the jurisdiction of the Court which passed it, unless the former Court, for any special reasons to be recorded under the hand of the Judge, requires such proof

Court receiving copies of decree, etc., to file same without proof.

226. When such copies are so filed, the decree or order may, if the Court to which it is sent be the District Court, be executed by such Court or by any subordinate Court which it directs to execute the same.

Execution of decree or order by Court to which it is sent.

227. If the Court to which the decree is sent for execution be a High Court, the decree shall be executed by such Court in the same manner as if it had been made by such Court in the exercise of its ordinary original civil jurisdiction.

Execution by High Court of decree transmitted by other Court.

228. The Court executing a decree sent to it under this Chapter shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

Powers of Court in executing transmitted decree.

229. A decree of any Court established<sup>4</sup> [or continued] by the authority of the Governor General in Council in the territories of any Foreign Prince

Appeal from orders in executing such decrees. Decrees of Courts established

<sup>1</sup> As to modification of this section by the Provincial Small Cause Courts Act, see the Provincial Small Cause Courts Act, 1887 (IX of 1887), s 34, printed, General Acts, Vol. V, Ed 1898, p 128

<sup>2</sup> For court-fee on such copies, see the Court-fees Act, 1870 (VII of 1870), Sch I, Art. 7, printed, General Acts, Vol II, Ed 1898, p 124

<sup>3</sup> For form of certificate, see Schedule IV, No 134, *infra*

<sup>4</sup> These words in s 229 were inserted by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s. 23, printed, General Acts, Vol V, Ed 1898, p. 232.

## (Part I.—Of Suits in General. Chapter XIX.—Of the Execution of Decrees Secs. 229A-229B)

by Govern-  
ment of  
India in  
Native  
States  
Sending  
of decrees  
of British  
Indian  
Courts to  
British  
Courts in  
Native  
States

Execution  
in British  
India of  
decrees of  
Courts of  
Native  
States.

or State, which cannot be executed within the jurisdiction of the Court by which it was made, may be executed in manner herein provided within the jurisdiction of any Court in British India.<sup>1</sup>

229A.<sup>2</sup> So much of the foregoing sections of this Chapter as empowers a Court to send a decree for execution to another Court shall be construed as empowering a Court in British India to send a decree for execution to any Court established or continued by the authority of the Governor General in Council in the territories of any Foreign Prince or State to which the Governor General in Council has, by notification in the Gazette of India, declared this section to apply.<sup>3</sup>

229B.<sup>4</sup> The Governor General in Council may, from time to time, by notification in the Gazette of India,—

(a) declare that the decrees of any Civil or Revenue Courts situate in the territories of any Native Prince or State in alliance with Her Majesty, and not established<sup>5</sup> [or continued] by the authority of the Governor General in Council, may be executed in British India as if they had been made by the Courts of British India, and<sup>6</sup>

(b) cancel any such declaration.<sup>7</sup>

So long as such declaration remains in force the said decrees may be executed accordingly.

<sup>1</sup> For list of such Courts as are mentioned in s 229, see Notifications No 1361-I, dated 29th March, 1889, and No 2179-I, dated 2nd July, 1890, printed at pages 372 and 373 of Macpherson's Lists of British Enactments in force in Native States (Western India), Ed 1895

<sup>2</sup> S 229A was inserted by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s. 24, printed, General Acts, Vol V, Ed 1898, p 232

<sup>3</sup> See Notification No 1362-I, dated 29th March, 1889, printed at page 242 of Macpherson's Lists of British Enactments in force in Native States (Central India), Ed 1893; and No 2180-I, dated the 2nd July, 1890, printed at page 374 of Macpherson's Lists of British Enactments in force in Native States (Western India), Ed 1895

<sup>4</sup> S 229B (formerly s 434) was transposed here by Act VII of 1888, s 39 (1), printed, General Acts, Vol V, Ed 1898 For notifications as to execution of decrees of Native States' Courts in British India, see note on p 22 of the Northern India Volume of Macpherson's Native States Lists, Ed 1891, pp 27, 35 and 74 of the Southern India, Madras and Mysore Volume, Ed 1888; pp 374 to 376 of the Western India Volume, Ed 1895

<sup>5</sup> These words in s 229B were inserted by Act VII of 1888, s 39 (2), printed, General Acts, Vol V, Ed 1898

<sup>6</sup> For declarations issued under s 229B (a), see Notification No 4055-I, dated 10th December, 1885, Gazette of India, 1885, Pt I, p 667, No 233-I J, dated 25th November, 1881, printed at p 74 of Macpherson's List of British Enactments in force in Native States, Southern India, Madras and Mysore, Ed 1888; and the Notifications printed at pp 378 to 381 of Macpherson's Lists of British Enactments in force in Native States (Western India), Ed 1895

<sup>7</sup> For declarations issued under s 229B (b), see Notification No 2591-I, dated 7th August, 1885, Gazette of India, 1885, Pt I, p 435, and No 1688-I, dated 20th May, 1890, Gazette of India, 1890, Pt I, p 385

*B.—Of Application for Execution.*<sup>1</sup>

230. When the holder of a decree desires to enforce it, shall apply to the Court which passed the decree or to the officer, if any, appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court then to such Court or to the proper officer thereof.

Application  
for execu-  
tion.

The Court may in its discretion refuse execution at the same time against the person and property of the judgment-debtor.

Where an application to execute a decree for the payment of money or delivery of other property has been made under this section and granted, no subsequent application to execute the same decree shall be granted after the expiration of twelve years from any of the following dates (namely):—

- (a) the date of the decree sought to be enforced or of the decree (if any) on appeal affirming the same, or
- (b) where the decree or any subsequent order directs any payment of money, or the delivery of any property, to be made at a certain date—the date of the default in making the payment or delivering the property in respect of which the applicant seeks to enforce the decree.

Nothing in this section shall prevent the Court from granting an application for execution of a decree after the expiration of the said term of twelve years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within twelve years immediately before the date of the application.

\* \* \* \* \*

231. If a decree has been passed jointly in favour of more persons than one, any one or more of such persons, or his or their representatives, may apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the representative in interest of the deceased.

Application  
by joint-  
decree-  
holder.

If the Court sees sufficient cause for allowing the decree to be executed on an application so made, it shall pass such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

<sup>1</sup> Ss 230 to 236 (both inclusive) extend to Provincial Small Cause Courts, *see* s 5, and the second schedule

<sup>2</sup> The last paragraph of s 230 was repealed by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 25, printed, General Acts, Vol V, Ed 1898, p 232.

## (Part I.—Of Suits in General. Chapter XIX.—Of the Execution of Decrees Secs. 232-235.)

Application  
by transferee  
of decree.

232. If a decree be transferred by assignment in writing, or by operation of law, from the decree-holder to any other person, the transferee may apply<sup>1</sup> for its execution to the Court which passed it; and, if that Court thinks fit, the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder:

Provided as follows.—

- (a) where the decree has been transferred by assignment, notice in writing of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to such execution:
- (b) where a decree for money against several persons has been transferred to one of them, it shall not be executed against the others.

Transferee  
to hold sub-  
ject to equi-  
ties enforce-  
able against  
original  
holder.  
If judgment-  
debtor die  
before exe-  
cution, appli-  
cation may be  
made against  
his repre-  
sentative.

233. Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.

234. If a judgment-debtor dies before the decree has been fully executed, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.<sup>2</sup>

Such representative shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and for the purpose of ascertaining such liability the Court executing the decree may, of its own motion or on the application of the decree-holder, compel the said representative to produce such accounts as it thinks fit.

Contents of  
application  
for execu-  
tion of  
decree.

235. The application for the execution of a decree shall be in writing, verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars<sup>3</sup> (namely):—

- (a) the number of the suit;
- (b) the names of the parties;
- (c) the date of the decree;

<sup>1</sup> For a restriction in the case of decrees for rent in Bengal, see the Bengal Tenancy Act, 1885 (VIII of 1885), s 148, cl (b), and s 1, printed, Bengal Code, Vol I, Ed 1889, p 557

<sup>2</sup> As to "*Estimrardars*" in Ajmere and Meiwara, see the Ajmere Land and Revenue Regulation, 1877 (II of 1877), s 29, printed, Ajmere Code, 1893, p 160 and s 3 of this Act

<sup>3</sup> An applicant for execution of decree for rent by attachment and sale of tenure or holding in Bengal must produce a statement showing certain particulars relating to the land, see the Bengal Tenancy Act, 1885 (VIII of 1885), s 162, printed, Bengal Code, Vol. I, Ed 1889, p 562

(Part I.—Of Suits in General. Chapter XIX.—Of the Execution of Decrees. Secs. 236-238.)

- (d) whether any appeal has been preferred from the decree;
- (e) whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the decree;
- (f) whether any and what previous applications have been made for execution of the decree and with what result;
- (g) the amount of the debt or compensation, with the interest, if any, due upon the decree, or other relief granted thereby;
- (h) the amount of costs, if any, awarded,
- (i) the name of the person against whom the enforcement of the decree is sought; and
- (j) the mode in which the assistance of the Court is required, whether by the delivery of property specifically decreed, by the arrest and imprisonment of the person named in the application, or by the attachment of his property, or otherwise as the nature of the relief sought may require.

236. Whenever an application is made for the attachment of any moveable property belonging to the judgment-debtor, but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same.

Application for attachment of moveable property to be accompanied with inventory.

237. Whenever an application is made for the attachment of any immoveable property belonging to the judgment-debtor, it shall contain at the foot a description of the property sufficient to identify it, and also a specification of the judgment-debtor's share or interest therein to the best of the belief of the applicant and so far as he has been able to ascertain the same.

Further particulars when application is for attachment of immoveable property.

Every such description and specification shall be verified in manner hereinbefore provided for the verification of plaints.<sup>1</sup>

238. If the property be land registered in the Collector's office, the application for attachment shall be accompanied by an authenticated extract from the register of such office, specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land or its revenue, or as liable to pay revenue for such land, and the shares of the registered proprietors.

When application must be accompanied by extract from Collector's register.

<sup>1</sup> See ss 51 and 52, *supra*.

## (Part I.—Of Suits in General Chapter XIX—Of the Execution of Decrees Secs 239-243.)

C —Of staying Execution<sup>1</sup>

When Court  
may stay  
execution

239. The Court to which a decree has been sent for execution under this Chapter shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was made, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay the execution,<sup>2</sup> or for any other order relating to the decree or execution which might have been made by such Court of first instance or appellate Court if execution had been issued thereby, or if application for execution had been made thereto;

and, in case the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution may order the restitution or discharge of such property or person pending the result of the application for such order.

Power to  
require se-  
curity from,  
or impose  
conditions  
upon, judg-  
ment-  
debtor.

240. Before passing an order under section 239 to stay execution or for the restitution of property or the discharge of the judgment-debtor, the Court may require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit.

Liability of  
judgment-  
debtor dis-  
charged to  
be retaken.

241. No discharge under section 239 of the property or person of a judgment-debtor shall prevent it or him from being retaken in execution of the decree sent for execution.

Order of  
Court which  
passed decree  
or of appel-  
late Court to  
be binding  
upon Court  
applied to.

242. Any order of the Court by which the decree was passed, or of such Court of appeal as aforesaid, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution.

Stay of  
execution  
pending suit  
between de-  
cree-holder  
and judg-  
ment-debt-  
or.

243. If a suit be pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court may (if it think fit) stay execution on the decree, either absolutely or on such terms as it thinks fit, until the pending suit has been decided.

<sup>1</sup> Ss 239 to 243 (both inclusive) extend to Provincial Small Cause Courts, *see* s 5 and the second schedule

<sup>2</sup> *See* s 545, *infra*

(Part I—Of Suits in General. Chapter XIX.—Of the Execution of Decrees. Secs. 244-245.)

*D—Question for Court executing Decree*

244.<sup>1</sup> The following questions shall be determined by order of the Court executing a decree and not by separate suit (namely):—

Questions to be decided by Court executing decree

- (a) questions regarding the amount of any mesne profits as to which the decree has directed inquiry;<sup>2</sup>
- (b) questions regarding the amount of any mesne profits or interest which the decree has made payable in respect of the subject-matter of a suit, between the date of its institution and the execution of decree, or the expiration of three years from the date of the decree;<sup>3</sup>
- (c) <sup>4</sup> [any other questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree or to the stay of execution thereof]

Nothing in this section shall be deemed to bar a separate suit for mesne profits accruing between the institution of the first suit and the execution of the decree thereon, where such profits are not dealt with by such decree.

<sup>5</sup> [If a question arises as to who is the representative of a party for the purposes of this section, the Court may either stay execution of the decree until the question has been determined by a separate suit or itself determine the question by an order under this section.]

*E.—Of the mode of executing Decrees.*

245. The Court, on receiving an application for the execution of a decree, shall ascertain whether such of the requirements of sections 235, 236, 237 and 238 as may be applicable to the case have been complied with, and, if they have not been complied with, the Court may reject the application or may allow it to be amended then and there, or within a time fixed by the Court. If the application be not so amended, it shall be rejected.

Procedure on receiving application for execution of decree

Every amendment made under this section shall be attested by the signature of the Judge.

<sup>1</sup> Ss 244 to 258 (both inclusive) and s 259 (except so far as it relates to the recovery of wives) extend to Provincial Small Cause Courts, *see* s 5 and the second schedule.

<sup>2</sup> *See* s 212, *supra*

<sup>3</sup> *See* s 211, *supra*

<sup>4</sup> Cl (c) of s 244 was substituted by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 26 (1), printed, General Acts, Vol V, Ed 1898, p 232

<sup>5</sup> The last paragraph of s 244 was added by Act VII of 1888, s 26 (2), printed, General Acts, Vol V, Ed 1898

(Part I.—Of Suits in General. Chapter XIX.—Of the Execution of Decrees. Secs. 245A-246.)

Procedure  
on admitting  
application

When the application is admitted the Court shall enter in the register of the suit<sup>1</sup> a note of the application and the date on which it was made, and shall order execution of the decree according to the nature of the application :

Provided that, in the case of a decree for money, the value of the property attached shall, as nearly as may be, correspond with the amount for which the decree has been made.

Prohibition  
of arrest  
or imprison-  
ment of  
women in  
execution  
of decree  
for money.

245A.<sup>2</sup> Notwithstanding anything in the last foregoing section or in any other section of this Code, the Court shall not order the arrest or imprisonment of a woman in execution of a decree for money.

Discretionary  
power to  
permit other  
judgment-  
debtors to  
show cause  
against im-  
prisonment.

245B.<sup>2</sup> (1) Notwithstanding anything in section 245 or in any other section of this Code, when an application is for the execution of a decree for money by the arrest and imprisonment of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court may, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to jail in execution of the decree

(2) If appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor

Cross-  
decrees.

246. If cross-decrees between the same parties for the payment of money be produced to the Court, execution shall be taken out only by the party who holds a decree for the larger sum, and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.

If the two sums be equal, satisfaction shall be entered upon both decrees.

*Explanation I*—The decrees contemplated by this section are decrees capable of execution at the same time and by the same Court.

*Explanation II*.—This section applies where either party is an assignee of one of the decrees and as well as in respect of judgment-debts due by

<sup>1</sup> See s 58 (last clause), *supra*

<sup>2</sup> Ss 245A and 245B were inserted by the Debtors Act, 1888 (VI of 1888), s 2, printed, General Acts, Vol. V, Ed. 1898, p 229.

(Part I.—Of Suits in General. Chapter XIX.—Of the Execution of Decrees Secs 247-248.)

the original assignor as in respect of judgment-debts due by the assignee himself.

*Explanation III.*—This section does not apply unless—

the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other and each party fills the same character in both suits; and

the sums due under the decrees are definite.

#### *Illustrations*

(a) A holds a decree against B for Rs 1,000 B holds a decree against A for the payment of Rs. 1,000 in case A fails to deliver certain goods at a future day. B cannot treat his decree as a cross-decree under this section.

(b) A and B, co-plaintiffs, obtain a decree for Rs 1,000 against C, and C obtains a decree for Rs. 1,000 against B C cannot treat his decree as a cross-decree under this section.

(c) A obtains a decree against B for Rs 1,000. C, who is a trustee for B, obtains a decree on behalf of B against A for Rs 1,000. B cannot treat C's decree as a cross-decree under this section

247. When two parties are entitled under the same decree to recover from each other sums of different amounts, the party entitled to the smaller sum shall not take out execution against the other party; but satisfaction for the smaller sum shall be entered on the decree.

Cross-claims under same decree.

When the amounts are equal neither party shall take out execution, but satisfaction for each sum shall be entered on the decree

248. The Court shall issue a notice<sup>1</sup> to the party against whom execution is applied for, requiring him to show cause, within a period to be fixed by the Court, why the decree should not be executed against him—

Notice to show cause why decree should not be executed.

(a) if more than one year has elapsed between the date of the decree and the application for its execution, or

(b) if the enforcement of the decree be applied for against the legal representative of a party to the suit in which the decree was made:

Provided that no such notice shall be necessary—

in consequence of more than one year having elapsed between the date of the decree and the application for execution, if the application be made within one year from the date of any decree passed on appeal from the decree sought to be executed, or of the last order against the party against

Proviso

<sup>1</sup> For form, see Sch IV, No 135, *infra*.

whom execution is applied for, passed on any previous application for execution, or

in consequence of the application being against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against him

*Explanation*—In this section the phrase “the Court” means the Court by which the decree was passed, unless the decree has been sent to another Court for execution, in which case it means such other Court.

Procedure  
after issue  
of notice.

249. If the person to whom notice is issued under the last preceding section does not appear, or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed.

If he offers any objection to the enforcement of the decree, the Court shall consider such objection and pass such order as it thinks fit

Warrant  
when to  
issue.

250. When the preliminary measures (if any) required by the foregoing provisions have been taken, the Court, unless it sees cause to the contrary, shall, <sup>1</sup>[subject to the provisions of sections 245A and 245B,] issue its warrant for the execution of the decree

Date,  
signature,  
seal and  
delivery

251. Such warrant shall be dated the day on which it is issued, signed by the Judge or such officer as the Court appoints in this behalf, sealed with the seal of the Court, and delivered to the proper officer to be executed.

And a day shall be specified in such warrant on or before which it must be executed, and the proper officer shall endorse thereon the day and manner in which it was executed, or, if it was not executed, the reason why it was not executed, and shall return it with such endorsement to the Court from which it issued.

Decree  
against repre-  
sentative of  
deceased for  
money to be  
paid out of  
deceased's  
property

252. If the decree be against a party as the legal representative of a deceased person, and the decree be for money to be paid out of the property of the deceased, it may be executed by the attachment and sale of any such property :

If no such property remains in the possession of the judgment-debtor, and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property not

<sup>1</sup> This part of s 250 was inserted by the Debtors Act, 1888 (VI of 1888), s 3, printed, General Acts, Vol V, Ed 1898, p 229.

## (Part I.—Of Suits in General Chapter XIX—Of the Execution of Decrees Secs 253-257)

duly applied by him, in the same manner as if the decree had been against him personally.<sup>1</sup>

253. Whenever a person has, before the passing of a decree in an original suit, become liable as surety for the performance of the same or of any part thereof, the decree may be executed against him to the extent to which he has rendered himself liable, in the same manner as a decree may be executed against a defendant:

Decree against surety.

Provided that such notice in writing as the Court in each case thinks sufficient has been given to the surety

254. Every decree or order directing a party to pay money, as compensation or costs, or as the alternative to some other relief granted by the decree or order, or otherwise, may be enforced by the imprisonment of the judgment-debtor, or by the attachment<sup>2</sup> and sale of his property in manner hereinafter provided, or by both

Decree for money.

255. If the decree be for mesne profits or any other matter the amount of which in money is to be subsequently determined, the property of the judgment-debtor may, before the amount due from him under the decree has been ascertained, be attached as in the case of an ordinary decree for money.

Decree for mesne profits or other matter, amount of which to be subsequently ascertained.

256. When a decree is passed for a sum of money only, and the amount decreed does not exceed the sum of one thousand rupees, the Court may, when passing the decree, on the oral application of the decree-holder,<sup>3</sup> order immediate execution thereof by the issue of a warrant directed either against the person of the judgment-debtor if he is within the local limits of the jurisdiction of the Court or against his moveable property within the same limits.

Power to direct immediate execution of decree for money not exceeding Rs 1,000

257. All money payable under a decree shall be paid as follows (namely):—

Modes of paying money under decree

- (a) into the Court whose duty it is to execute the decree; or
- (b) out of Court to the decree-holder; or
- (c) otherwise as the Court which made the decree directs.

<sup>1</sup> As to "*Estimrardars*" in Ajmere and Merwara, see the Ajmere Land and Revenue Regulation, 1877 (II of 1877), s 29, printed, Ajmere Code, Ed. 1893, p 160, and s 3, *supra*

<sup>2</sup> For form of warrant of attachment, see Sch IV, No 136, *infra*

<sup>3</sup> For power to order execution on oral application in suits for recovery of rent in Bengal, see the Bengal Tenancy Act, 1885 (VIII of 1885), s 148 (g), printed, Bengal Code, Vol I, Ed 1889, pp 503, 557

(Part I.—Of Suits in General. Chapter XIX—Of the Execution of Decrees. Secs. 257A-259.)

Agreement  
to give time  
to judgment-  
debtor

257A. Every agreement to give time for the satisfaction of a judgment-debt shall be void unless it is made for consideration and with the sanction of the Court which passed the decree, and such Court deems the consideration to be under the circumstances reasonable

Agreement  
for satis-  
faction of  
judgment-  
debt.

Every agreement for the satisfaction of a judgment-debt, which provides for the payment, directly or indirectly, of any sum in excess of the sum due or to accrue due under the decree, shall be void unless it is made with the like sanction.

Any sum paid in contravention of the provisions of this section shall be applied to the satisfaction of the judgment-debt; and the surplus, if any, shall be recoverable by the judgment-debtor.

Payment  
to decree-  
holder

258. If any money payable under a decree is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, or if any payment is made in pursuance of an agreement of the nature mentioned in section 257A, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree

The judgment-debtor also may inform the Court of such payment or adjustment, and apply<sup>1</sup> to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after due service of such notice, the decree-holder fails to appear on the day fixed, or having appeared fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

<sup>2</sup>[Unless such a payment or adjustment has been certified as aforesaid, it shall not be recognized as a payment or adjustment of the decree by any Court executing the decree.]

Decrees for  
specific  
moveables,  
or recovery  
of wives

259. If the decree be for any specific moveable, or for any share in a specific moveable, or for the recovery of a wife, it may be enforced by the seizure, if practicable, of the moveable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the imprisonment,<sup>3</sup> of the judgment-debtor, or by attaching his property or by both imprisonment and attachment if necessary.

<sup>1</sup> For limitation of each application, *see* the Indian Limitation Act, 1877 (XV of 1877), Sch II, Art. 161, printed, General Acts, Vol III, Ed. 1898, p 75, and s 3, *supra*

<sup>2</sup> The last paragraph of s 258 was substituted by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 27, printed, General Acts, Vol V, Ed 1898, p 232.

<sup>3</sup> As to term of imprisonment, *see* s 342, *infra*

When any attachment under this section has remained in force for six months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed under section 208, such amount, and, in other cases, such compensation, as it thinks fit, and shall pay the balance, if any, to the judgment-debtor on his application.

If the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or if, at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease to exist.

260. When the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights or for the performance of or abstention from any other particular act, has been made, has had an opportunity of obeying the decree or injunction and has wilfully failed to obey it, the decree may be enforced by his imprisonment,<sup>1</sup> or by the attachment of his property, or by both.

Decree for specific performance or restitution of conjugal rights.

When any attachment under this section has remained in force for one year, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, the property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and may pay the balance, if any, to the judgment-debtor on his application.

If the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or if, at the end of one year from the date of the attachment, no application to have the property sold has been made and granted, the attachment shall cease to exist.

261. If the decree be for the execution of a conveyance, or for the endorsement of a negotiable instrument and the judgment-debtor neglects or refuses to comply with the decree, the decree-holder may prepare the draft of a conveyance or endorsement in accordance with the terms of the decree, and deliver the same to the Court.

Decree for execution of conveyances, or endorsement of negotiable instruments

The Court shall thereupon cause the draft to be served on the judgment-debtor in manner hereinbefore provided for serving a summons, together

<sup>1</sup> As to term of imprisonment, see s 342, *infra*

(Part I.—Of Suits in General Chapter XIX.—Of the Execution of Decrees. Secs. 262-264.)

with a notice in writing stating that his objections, if any, thereto shall be made within such time (mentioning it) as the Court fixes in this behalf.

The decree-holder may also tender a duplicate of the draft to the Court for execution, upon the proper stamp-paper if a stamp is required by law.

On proof of such service the Court, or such officer as it appoints in this behalf, shall execute the duplicate so tendered, or may, if necessary, alter the same, so as to bring it into accordance with the terms of the decree and execute the duplicate so altered:

Provided that, if any party object to the draft so served as aforesaid, his objections shall, within the time so fixed, be stated in writing and argued before the Court, and the Court shall thereupon pass such order as it thinks fit, and execute, or alter and execute, the duplicate in accordance therewith.

Form and  
effect of  
execution of  
conveyance  
by Court.

262. The execution of a conveyance, or the endorsement of a negotiable instrument, by the Court under the last preceding section may be in the following form: "*C. D.*, Judge of the Court of (or as the case may be), for *A. B.*, in a suit by *E. F.*, against *A. B.*," or in such other form as the High Court may from time to time prescribe, and shall have the same effect as the execution of the conveyance or endorsement of the instrument by the party ordered to execute or endorse the same.

Decree for  
immoveable  
property

263. If the decree be for the delivery of any immoveable property, possession thereof shall be delivered<sup>1</sup> over to the party to whom it has been adjudged, or to such person, as he appoints to receive delivery on his behalf, and, if need be, by removing any person bound by the decree who refuses to vacate the property.

Delivery of  
immoveable  
property  
when in  
occupancy  
of tenant.

264. If the decree be for the delivery of any immoveable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum, or in such other mode as is customary, at some convenient place, the substance of the decree in regard to the property:

Provided that, if the occupant can be found, a notice in writing containing such substance shall be served upon him, and in such case no proclamation need be made.

<sup>1</sup> For form of warrant, see Sch IV, No 137, *infra*

265. If the decree be for the partition or for the separate possession of a share of an undivided estate paying revenue to Government, the partition of the estate or the separation of the share shall be made by the Collector and according to the law, if any, for the time being in force for the partition, or the separate possession of shares, of such estates.

Partition of estate or separation of share

*F.—Of Attachment of Property.*<sup>1</sup>

266.<sup>2</sup> The following property is liable to attachment and sale in execution of a decree (namely), lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory-notes, Government securities, bonds or other securities for money, debts, shares in the capital or joint stock of any railway, banking or other public Company or Corporation, and, except as hereinafter mentioned, all other saleable property, moveable or immoveable, belonging to the judgment-debtor or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, and whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Property liable to attachment and sale in execution of decree.

Provided that the following particulars<sup>3</sup> shall not be liable to such attachment or sale (namely):—

- (a) the necessary wearing apparel<sup>4</sup> [and bedding] of the judgment-debtor, his wife and children;
- (b) tools of artizans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle<sup>4</sup> [and seed-grain]

<sup>1</sup> S 266 (except so far as it relates to moveable property), ss 267 to 272 (both inclusive), s 273 (so far as it relates to moveable property), ss 275 to 280 (both inclusive), s 284 (so far as it relates to moveable property), and s 285 extend to Provincial Small Cause Courts, see s 5 and the second schedule.

Ss 278 to 283 are not applicable to a tenure or holding in Bengal attached in execution of a decree for rent, see Bengal Tenancy Act, 1885 (VIII of 1885), s 170 (1), printed, Bengal Code, Vol I, Ed 1889, p 503

<sup>2</sup> In Oudh so much of s 266 as renders land liable to sale in execution of a decree is subject to the following restriction —

No ancestral property in land shall be sold in satisfaction of a decree without the permission of the Chief Commissioner; no self-acquired property in land shall be so sold without the permission of the Commissioner

*Explanation*—In this section the words “ancestral property” includes the moveable property of persons admitted to engagement for the land-revenue at the summary settlement of 1853-59, see the Oudh Laws Act, 1876 (XVIII of 1876), s 20, printed, North-Western Provinces and Oudh Code, Ed 1892, p 313, and *supra*, s 3

<sup>3</sup> As to Ajmere, see the Ajmere Courts Regulation, 1877 (I of 1877), s 26, printed, Ajmere Code, Ed 1893, p 147, and s 3 of this Act, see also the Indian Marine Act, 1837 (XIV of 1837), s 81, printed, General Acts, Vol V, Ed 1898, p 164

<sup>4</sup> These words in clauses (a) and (b) were inserted by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 28 (1) and (2), printed, General Acts, Vol V, Ed 1898, p 232

## (Part I.—Of Suits in General. Chapter XIX.—Of the Execution of Decrees. Sec 266.)

as may in the opinion of the Court be necessary to enable him to earn his livelihood as such;

- (c) the materials of houses and other buildings belonging to and occupied by agriculturists;
- (d) books of account;
- (e) mere rights to sue for damages;
- (f) any right of personal service;
- (g) stipends and gratuities allowed to military and civil pensioners of Government, and political pensions;<sup>1</sup>
- <sup>2</sup>(h) the salary of a public officer or of any servant of a Railway Company or local authority to the extent of—
  - (i) the whole of the salary where the salary does not exceed twenty rupees monthly;
  - (ii) twenty rupees monthly where the salary exceeds twenty rupees and does not exceed forty rupees monthly; and
  - (iii) one moiety of the salary in any other case.
- (i) the pay and allowances of persons to whom the [Indian]<sup>3</sup> Articles of War of 1869 apply;
- (j) the wages of labourers and domestic servants;<sup>4</sup>
- (k) an expectancy of succession by survivorship or other merely contingent or possible right or interest;
- (l) a right to future maintenance,
- <sup>5</sup>(m) any allowance declared by any law passed under the <sup>6</sup>Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council to be exempt from liability to attachment or sale in execution of a decree; 24 & 25  
Vict., c.  
67
- <sup>5</sup>(n) where the judgment-debtor is a person liable for the payment of land-revenue, any moveable property which under any law applicable to him is exempt from sale for the recovery of an arrear of such revenue

<sup>1</sup> See, too, s 11 of the Pensions Act, 1871 (XXIII of 1871), printed, General Acts, Ed 1898, Vol. II, p 215

<sup>2</sup> Clause (n) was substituted by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 28, (3), printed, General Acts, Vol V. Ed 1898, p 232

<sup>3</sup> The word "Indian" was substituted for the word "Native" by the Repealing and Amending Act, 1891 (XII of 1891), second schedule The Articles are printed in the General Acts, Vol. II, Ed 1898, p 38

<sup>4</sup> Cf the Wages Attachment Abolition Act, 1870 (33 & 34 Vict., c 30)

<sup>5</sup> Clauses (m) and (n) were added by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 28 (4), printed, General Acts, Vol V, Ed 1898, p 232

<sup>6</sup> Printed, Collection of Statutes relating to India, Ed 1881, Vol II, p 695

(Part I.—Of Suits in General. Chapter XIX—Of the Execution of Decrees Secs 267-268.)

*Explanation*—The particulars mentioned in clauses (g), (h), (i), <sup>1</sup> [(j) and (m)] are exempt from attachment or sale whether before or after they are actually payable:

Provided also that nothing in this section shall be deemed—

- (a) to exempt the materials of houses and other buildings from attachment or sale in execution of decrees for rent, or
- (b) to affect the <sup>2</sup> Army Act, 1881, or any similar law for the time being in force

267. The Court may, of its own motion or on the application of the decree-holder, summon any person whom it thinks necessary, and examine him in respect to any property liable to be seized in satisfaction of the decree, and may require the person summoned to produce any document in his possession or power relating to such property, and, before issuing the summons, of its own motion, shall declare the person on whose behalf the summons is so issued.

Power to summon and examine persons as to property liable to be seized.

268. In the case of (a) a debt not secured by a negotiable instrument, (b) a share in the capital of any public Company or Corporation, (c) other moveable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any Court, the attachment shall be made a written order <sup>3</sup> prohibiting—

Attachment of debt, share and other property not in possession of judgment-debtor.

- (a) in the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Court;
- (b) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;
- (c) in the case of the other moveable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

A copy of such order shall be fixed up in some conspicuous part of the court-house, and another copy of the same shall be sent, in the case of the debt, to the debtor, in the case of the share, to the proper officer of the Company or Corporation, and in the case of the other moveable property (except as aforesaid), to the person in possession of the same.

<sup>1</sup> These letters and word in the *Explanation* to s. 266 were substituted for the word and letter "and (j)" by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s. 28 (5), printed, General Acts, Vol V, Ed 1898, p 232.

<sup>2</sup> Printed, Collection of Statutes relating to India, Ed 1881, Supplement, p. 22.

<sup>3</sup> For forms, see Sch. IV, Nos 138, 139 and 140, *infra*.

(Part I.—Of Suits in General. Chapter XIX.—Of the Execution of Decrees. Secs. 269-270.)

A debtor prohibited under clause (a) of this section may pay the amount of his debt into Court and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

In the case of the salary of a public officer or the servant of a Railway Company, the attachment shall be made by a written order requiring the officer whose duty it is to disburse the salary to withhold every month such portion as the Court may direct, until the further orders of the Court.

A copy of every such order shall be fixed up in a conspicuous part of the court-house and shall be served on the officer so required.

Every such officer may from time to time pay into Court any portion so withheld, and such payment shall discharge the Government or the Railway Company, as the case may be, as effectually as payment to the judgment-debtor.

Attachment  
of moveable  
property in  
possession of  
judgment-  
debtor

269. If the property be moveable property in the possession of the judgment-debtor, other than the property mentioned in the first proviso to section 266, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof:

Proviso

Provided that when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody will exceed its value, the proper officer may sell it at once

Power to  
make rules  
for main-  
tenance of  
attached live-  
stock.

The Local Government may, from time to time, make rules<sup>1</sup> for the maintenance and custody, while under attachment, of live-stock and other moveable property, and the officer attaching property under this section shall, notwithstanding the provisions of the former part of this section, act in accordance with such rules.

Attachment  
of negotiable  
instruments.

270. If the property be a negotiable instrument not deposited in a Court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court and held subject to the further orders of the Court.

<sup>1</sup> For such rules framed for.—

(1) Assam

(2) Bombay

(3) Madras

(4) North-Western Provinces and Oudh

see Assam Manual of Local Rules and Orders, Ed 1893, pp 192-194;  
see Bombay List of Local Rules and Orders, Ed 1896, Vol I, p 397;  
see Madras List of Local Rules and Orders, Ed 1898, Vol I, p. 195;  
see North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p 111.

271. No person executing any process under this Code directing or authorizing seizure of moveable property shall enter any dwelling-house after sunset and before sunrise, or shall break open any outer door of a dwelling-house. But when any such person has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe any such property to be:

Seizure of property in building.

Provided that if the room be in the actual occupancy of a woman who according to the customs of the country does not appear in public, the person executing the process shall give notice to her that she is at liberty to withdraw; and after allowing a reasonable time for such woman to withdraw, and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution consistent with these provisions, to prevent its clandestine removal.

Seizure of property in *zanánas*.

272. If the property be deposited in, or be in the custody of, any Court or public officer, the attachment shall be made by a notice<sup>1</sup> to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice issues:

Attachment of property deposited in Court or with Government officer.

Provided that, if such property is deposited in, or is in the custody of, a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

Proviso

273. If the property be a decree for money passed by the Court which passed the decree sought to be executed, the attachment shall be made by an order of the Court directing the proceeds of the former decree to be applied in satisfaction of the latter decree.

Attachment of decree for money.

If the property be a decree for money passed by any other Court, the attachment shall be made by a notice in writing to such Court under the hand of the Judge of the Court which passed the decree sought to be executed, requesting the former Court to stay the execution of its decree until such notice is cancelled by the Court from which it was sent. The Court receiving such notice shall stay execution accordingly, unless and until—

(a) the Court which passed the decree sought to be executed cancels the notice, or

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<sup>1</sup> For form, see Sch IV, No 142, *infra*

(Part I.—Of Suits in General. Chapter XIX.—Of the Execution of Decrees. Secs 274-276)

(b) the holder of the decree sought to be executed applies to the Court receiving such notice to execute its own decree

On receiving such application the Court shall proceed to execute the decree and apply the proceeds in satisfaction of the decree sought to be executed.

Attachment  
of other  
decrees

In the case of all other decrees the attachment shall be made by a notice in writing, under the hand of the Judge of the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and, when such decree has been passed by any other Court, also by sending to such Court a like notice in writing to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent. Every Court receiving such notice shall give effect to the same until it is so cancelled.

Decree-  
holders to  
give information.

The holder of any decree attached under this section shall be bound to give the Court executing the same such information and aid as may reasonably be required.

Attachment  
of immove-  
able property.

274. If the property be immoveable, the attachment shall be made by an order<sup>1</sup> prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from receiving the same from him by purchase, gift or otherwise.

The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be fixed up in a conspicuous part of the property and of the court-house.

When the property is land paying revenue to Government, a copy of the order shall also be fixed up in the office of the Collector of the district in which the land is situate.

Order for  
withdrawal  
of attach-  
ment after  
satisfaction  
of decree.

275. If the amount decreed with costs and all charges and expenses resulting from the attachment of any property be paid into Court, or if satisfaction of the decree be otherwise made through the Court, or if the decree is set aside or reversed, an order shall be issued, on the application of any person interested in the property, for the withdrawal of the attachment.

Private  
alienation of  
property

276. When an attachment has been made by actual seizure or by written order duly intimated and made known in manner aforesaid, any private

<sup>1</sup> For form of order, see Sch IV, No 141, *infra*

## (Part I—Of Suits in General Chapter XIX.—Of the Execution of Decrees. Secs. 277-280)

alienation of the property attached, whether by sale, gift, mortgage or otherwise, and any payment of the debt or dividend, or a delivery of the share, to the judgment-debtor during the continuance of the attachment, shall be void as against all claims enforceable under the attachment.

after attachment is void.

277. If the property attached is coin or currency notes, the Court may, at any time during the continuance of the attachment, direct<sup>1</sup> that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same

Court may direct coin or currency notes attached to be paid to party entitled

278. If any claim be preferred to, or any objection be made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit:<sup>2</sup>

Investigation of claims to, and objections to attachment of, attached property

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed.

If the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection.

Postponement of sale.

279. The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached.

Evidence to be adduced by claimant

280.<sup>3</sup> If upon the said investigation the Court is satisfied that, for the reason stated in the claim or objection, such property was not, when attached, in the possession of the judgment-debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment-debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Court shall pass an order for releasing the property, wholly or to such extent as it thinks fit, from attachment.

Release of property from attachment.

<sup>1</sup> For form of order, see Sch IV, No 143, *infra*

<sup>2</sup> For form of notice to attaching creditor, see Sch IV, No 144, *infra*

<sup>3</sup> As to limitation of suits to establish right to property comprised in orders made under ss 280, 281 and 282, see the Limitation Act, 1877 (XV of 1877), Sch. II, Article II, printed, General Acts, Vol III, Ed 1898, p 86, and also *supra*, s. 3.

Disallowance of claim to release of property attached.

281.<sup>1</sup> If the Court is satisfied that the property was, at the time it was attached, in possession of the judgment-debtor as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim.

Continuance of attachment subject to claim of incumbrancer  
Saving of suits to establish right to attached property.

282. If the Court is satisfied that the property is subject to a mortgage or lien in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or lien.

Power to order property attached to be sold and proceeds to be paid to person entitled  
Property attached in execution of decrees of several Courts

283. The party against whom an order under section 280, 281 or 282 is passed may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive.

284. Any Court may order that any property which has been attached, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

285. Where property not in the custody of any Court has been attached in execution of decrees of more Courts than one, the Court which shall receive or realize such property and shall determine any claim thereto and any objection to the attachment thereof shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.

#### *G.—Of Sale and Delivery of Property.*<sup>2</sup>

##### (a) GENERAL RULES.<sup>3</sup>

Sales by whom conducted and how made

286. Sales in execution of decrees shall be conducted by an officer of the Court or by any other person whom the Court may appoint, and, except as provided in section 296, shall be made by public auction in manner hereinafter mentioned.

<sup>1</sup> See footnote 3 on the preceding page

<sup>2</sup> Certain modifications have been made in the application of the rules prescribed in ss 281, 283, 293 and 306 to 316 (both inclusive) to sales of immoveable property under the Central Provinces Land Revenue Act, 1881 (XVIII of 1881), s 109, and *supra* s 3. For Act XVIII of 1881, see the revised edition, as modified up to 15th November, 1898, published by the Legislative Department

<sup>3</sup> Ss 286 to 289 (both inclusive) so far as they relate to moveable property, 290, 291, 292, 293 (so far as they relate to re-sales under s 297), 294 and 295 extended to Provincial Small Cause Courts, *see* s 5 and the second schedule

287. When any property is ordered to be sold<sup>1</sup> by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court. Such proclamation<sup>2</sup> shall state the time and place of sale, and shall specify as fairly and accurately as possible—

Proclamation  
of sales by  
public  
auction

- (a) the property to be sold;
- (b) the revenue assessed upon the estate or part of the estate, when the property to be sold is an interest in an estate or a part of an estate paying revenue to Government,
- (c) any incumbrance to which the property is liable;
- (d) the amount for the recovery of which the sale is ordered; and
- (e) every other thing which the Court considers material for the purchaser to know in order to judge of the nature and value of the property.

For the purpose of ascertaining the matters so to be specified, the Court may summon any person whom it thinks necessary, and examine him in respect to any such matters, and require him to produce any document in his possession or power relating thereto.

The High Court shall, as soon as may be after this Code comes into force, make rules for the guidance of the Courts in exercise of their duties under this section. The High Court may, from time to time, alter any rules so made. All such rules shall be published in the local official Gazette and shall thereupon have the force of law. As regards his own Court and the Court of Small Causes at Rangoon, the Recorder of Rangoon shall be deemed to be a "High Court" within the meaning of this paragraph.

Rules to be  
made by High  
Court.

Nothing in this section shall apply to cases in which the execution of the decree has been transferred to the Collector.<sup>3</sup>

288. No Judge or other public officer shall be answerable for any error, misstatement or omission in any proclamation under section 287, unless the same has been committed or made dishonestly.

Indemnity  
of Judges,  
etc

<sup>1</sup> For form of warrant of sale, see Sch IV, No 145, *infra*

<sup>2</sup> In cases of decrees for rent in Bengal, the order of attachment and proclamation of sale must issue simultaneously and certain additional particulars are required in the latter, see Bengal Tenancy Act, 1885 (VIII of 1885), s 163 (1) and (2), printed, Bengal Code, Vol I, Ed. 1889, p 562

<sup>3</sup> See ss 320 to 325 C, *infra*

(Part I.—Of Suits in General. Chapter XIX.—Of the Execution of Decrees. Secs. 289-292)

Mode of  
making pro-  
clamation

289. The proclamation shall be made,<sup>1</sup> in manner prescribed by section 274, \* \* \*<sup>2</sup> and a copy thereof shall then be fixed up in the court-house and, in the case of land paying revenue to Government, also in the Collector's office

If the Court so direct, such proclamation shall also be published in the local official Gazette and in some local newspaper, and the costs of such publication shall be deemed to be costs of the sale

Time of  
sale

290. Except in the case of property mentioned in the proviso to section 269, no sale under this Chapter shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immoveable property, and of at least fifteen days in the case of moveable property, calculated from the date on which the copy of the proclamation has been fixed up in the court-house of the Judge ordering the sale.<sup>3</sup>

Power to  
adjourn sale

291.<sup>4</sup> The Court may in its discretion adjourn any sale under this Chapter (other than a sale by the Collector) to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment. Provided that when the sale is made in, or within the precincts of, the court-house, no such adjournment shall be made without the leave of the Court. Whenever a sale is adjourned under this section for a longer period than seven days, a fresh proclamation under section 289 shall be made, unless the judgment-debtor consents to waive it. Every such sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to such officer, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court that ordered the sale.

Stoppage  
of sale on  
tender of  
debt and  
costs, or on  
proof of pay-  
ment

Officers  
concerned in  
execution  
sales not to  
bid for or  
buy prop-  
erty sold.

292. No officer having any duty to perform in connection with any sale under this Chapter shall either directly or indirectly bid for, acquire or attempt to acquire any interest in any property sold at such sale.

<sup>1</sup> For additional means of publishing a proclamation in case of sale for arrears of rent in Bengal, see the Bengal Tenancy Act, 1885 (VIII of 1885), s. 163 (3), printed, Bengal Code, Vol I, Ed 1889, p. 562, and *supra*, s. 1

<sup>2</sup> The words "on the spot where the property is attached" were repealed by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s. 29, printed, General Acts, Vol V, Ed 1898, p. 232

<sup>3</sup> For special provision as to sales for arrears of rent in Bengal, see the Bengal Tenancy Act, 1885 (VIII of 1885), s. 163 (4), printed, Bengal Code, Vol I, Ed 1889, p. 562, and *supra*, s. 1.

<sup>4</sup> For special provision as to adjournment of sale for arrears of rent in Bengal, see *ibid*, s. 165, printed, *ibid*, p. 563, and *supra*, s. 1.

## (Part I.—Of Suits in General. Chapter XIX.—Of the Execution of Decrees Secs. 293-295.)

293. The deficiency of price (if any) which may happen on a re-sale under this Code by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Court by the officer holding the sale,

Defaulting purchaser answerable for loss by re-sale.

and shall, at the instance of either the judgment-creditor or the judgment-debtor, be recoverable from the defaulter under the rules contained in this Chapter for the execution of a decree for money.

294. No holder of a decree<sup>1</sup> in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.

Decree-holder not to bid for or buy property without permission. If decree-holder purchase, amount of decree may be taken as payment.

When a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, if he so desires, be set-off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly

When a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person interested in the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the decree-holder.

295. Whenever assets are realized by sale or otherwise in execution of a decree, and more persons than one have, prior to the realization, applied to the Court by which such assets are held for execution of decrees for money against the same judgment-debtor, and have not obtained satisfaction thereof, the assets, after deducting the costs of the realization, shall be divided rateably among all such persons

Proceeds of execution-sale to be divided rateably among decree-holders

Provided as follows:—

- (a) when any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not as such be entitled to share in any surplus arising from such sale:
- (b) when any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the assent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee

Proviso where property is sold subject to mortgage

<sup>1</sup> In Bengal a decree-holder and judgment-debtor may bid at sales of tenures or holdings notwithstanding the provisions of this section, see the Bengal Tenancy Act, 1885 (VIII of 1885), s. 173, printed, Bengal Code, Vol I, Ed 1889, p. 503

(Part I.—Of Suits in General. Chapter XIX—Of the Execution of Decrees. Secs. 296-298.)

or incumbrancer the same right against the proceeds of the sale as he had against the property sold;

- (c) when immoveable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied<sup>1</sup>—

*first*, in defraying the expenses of the sale;

*secondly*, in discharging the interest and principal money due on the incumbrance;

*thirdly*, in discharging the interest and principal moneys due on subsequent incumbrances (if any); and

*fourthly*, rateably among the holders of decrees for money against the judgment-debtor who have, prior to the sale of the said property, applied to the Court which made the decree ordering such sale for execution of such decrees and have not obtained satisfaction thereof.

If all or any of such assets be paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

Nothing in this section affects any right of the Government.

#### (b) RULES AS TO MOVEABLE PROPERTY<sup>2</sup>

Rules as to negotiable instruments and shares in public Companies

296. If the property to be sold be a negotiable instrument or a share in any public Company or Corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker at the market-rate of the day.

Payment for other moveable property sold.

297. In the case of other moveable property, the price of each lot shall be paid for at the time of sale, or as soon after as the officer holding the sale directs, and, in default of payment, the property shall forthwith be again put up and sold

On payment of the purchase-money, the officer holding the sale shall grant a receipt for the same, and the sale shall become absolute.

Irregularity not to vitiate sale of moveable property but any

298. No irregularity in publishing or conducting the sale of moveable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may insti-

<sup>1</sup> Other rules are prescribed for the disposal of proceeds of sale of tenures or holdings in Bengal for arrears of rent, *see* the Bengal Tenancy Act, 1885 (VIII of 1885), s. 169 (5), printed, Bengal Code, Ed 1889, p. 564, and *supra*, s. 1

<sup>2</sup> Ss. 296 to 303 (both inclusive) extend to Provincial Small Cause Courts, *see* s. 5 and the second schedule

tute a suit against him for compensation, or (if such other person be the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

person  
injured may  
sue

299. When the property sold is a negotiable instrument or other moveable property, of which actual seizure has been made, the property shall be delivered to the purchaser

Delivery of  
moveable  
property  
actually  
seized.

300. When the property sold is any moveable property to which the judgment-debtor is entitled subject to the possession of some other person, the delivery thereof to the purchaser shall be made by giving notice<sup>1</sup> to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

Delivery of  
moveable  
property to  
which judg-  
ment-debtor  
entitled  
subject to  
lien

301. When the property sold is a debt not secured by a negotiable instrument, or is a share in any public Company, the delivery thereof shall be made by a written order<sup>2</sup> of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the Company from permitting any such transfer or making any such payment to any person except the purchaser.

Delivery of  
debts and of  
shares in  
public Com-  
panies

302. If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public Company is standing is required to transfer such instrument or share, the Judge may endorse the instrument or the certificate of the share, or may execute such other document as may be necessary.

Transfer of  
negotiable  
instruments  
and shares

The endorsement or execution shall be in the following form or to the like effect:—"A. B., by C. D., Judge of the Court of (*or as the case may be*); in a suit by E. F. against A. B."

Until the transfer of such instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon, and to sign a receipt for the same; and any endorsement made, or document executed, or receipt signed, as aforesaid, shall be as valid and effectual for all purposes as if the same had been made or executed or signed by the party himself.

<sup>1</sup> For form of notice, see Sch IV, No 146, *infra*

<sup>2</sup> For forms of orders, see Sch IV, Nos 147 and 148, *infra*.

(Part I.—Of Suits in General Chapter XIX—Of the Execution of Decrees. Secs. 303-308.)

Vesting order  
in case of  
other prop-  
erty.

303. In the case of any moveable property not hereinbefore provided for, the Court may make an order vesting such property in the purchaser or as he may direct; and such property shall vest accordingly.

(c) RULES AS TO IMMOVEABLE PROPERTY.<sup>1</sup>

What Courts  
may order  
sales of l.n.<sup>1</sup>  
Postpone-  
ment of sale  
of land to  
enable defend-  
ant to raise  
amount  
of decree.

304. Sales of immoveable property in execution of a decree may be ordered by any Court other than a Court of Small Causes.

305. When an order for the sale of immoveable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by mortgage or lease or private sale of such property, or some part thereof or of any other immoveable property of the judgment-debtor, the Court may on his application postpone the sale of property comprised in the order for sale, for such period as it thinks proper to enable him to raise the amount.

Certificate  
to judgment-  
debtor

In such case the Court shall grant a certificate to the judgment-debtor authorizing him, within a period to be mentioned therein, and notwithstanding anything contained in section 276, to make the proposed mortgage, lease or sale:

Provided that all moneys payable under such mortgage, lease or sale shall be paid into Court and not to the judgment-debtor:

Provided also that no mortgage, lease or sale under this section shall become absolute until it has been confirmed by the Court.

Deposit by  
purchaser of  
immoveable  
property.

306. On every sale of immoveable property under this Chapter, the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per centum on the amount of his purchase-money to the officer conducting the sale, and, in default of such deposit, the property shall forthwith be put up again and sold

Time for  
payment  
in full.

307. The full amount of purchase-money shall be paid by the purchaser before the Court closes on the fifteenth day after the sale of the property, exclusive of such day, or, if the fifteenth day be a Sunday or other holiday, then on the first office day after the fifteenth day.

Procedure  
in default of  
payment.

308. In default of payment within the period mentioned in the last preceding section, the deposit, after defraying the expenses of the sale, shall be forfeited to Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

<sup>1</sup> Ss 305 and 320 to 326 are not applicable to suits for the recovery of rent in Bengal, see the Bengal Tenancy Act, 1885 (VIII of 1885), s 148 (a), printed, Bengal Code, Vol I Ed 1889, p. 556.

*(Part I.—Of Suits in General. Chapter XIX.—Of the Execution of Decrees. Secs 309-312.)*

309. Every re-sale of immoveable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh notification in the manner and for the period hereinbefore prescribed for the sale.

Notification  
on re-sale of  
immoveable  
property

310. When the property sold in execution of a decree is a share of undivided immoveable property, and two or more persons, of whom one is a co-sharer, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the co-sharer.

Co-sharer of  
share of undi-  
vided estate  
sold in  
execution to  
have pre-  
ference in  
bidding.  
Application  
by judgment-  
debtor to set  
aside sale on  
deposit of  
debt

310A.<sup>1</sup> Any person whose immoveable property has been sold under this Chapter, may at any time within thirty days from the date of sale apply to have the sale set aside on his depositing in Court—

- (a) for payment to the purchaser, a sum equal to five per centum of the purchase-money, and
- (b) for payment to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder.

If such deposit is made within thirty days, the Court shall pass an order setting aside the sale:

Provided that, if a person applies under the next following section to set aside the sale of his immoveable property, he shall not be entitled to make an application under this section. Nothing in this section shall be construed to relieve the judgment-debtor from any liability he may be under in respect of costs and interests not covered by the proclamation of sale.

311. The decree-holder, or any person whose immoveable property has been sold under this Chapter, may apply to the Court to set aside the sale on the ground of a material irregularity in publishing or conducting it;

Application  
to set aside  
sale of land  
on ground of  
irregularity.

but no sale shall be set aside on the ground of irregularity unless the applicant proves to the satisfaction of the Court that he has sustained substantial injury by reason of such irregularity.

312. If no such application as is mentioned in the last preceding section be made, or if such application be made and the objection be

Effect of  
objection  
being disal-  
lowed and

<sup>1</sup> This section was inserted by the Civil Procedure Code Amendment Act, 1894 (V of 1894), s 2, printed, General Acts, Vol VI

of its being  
allowed

disallowed, the Court shall pass an order<sup>1</sup> confirming the sale as regards the parties to the suit and the purchaser.

If such application be made, and if the objection be allowed, the Court shall pass an order setting aside the sale.

No suit to set aside, on the ground of such irregularity, an order passed under this section shall be brought by the party against whom such order has been made.

Application  
to set aside  
sale on  
ground of  
judgment-  
debtor  
having no  
saleable  
interest.

313.<sup>2</sup> The purchaser at any such sale may apply to the Court to set aside the sale, on the ground that the person whose property purported to be sold had no saleable interest therein, and the Court may make such order as it thinks fit:

Provided that no order to set aside a sale shall be made unless the judgment-debtor and the decree-holder have had opportunity of being heard against such order.

Confirmation  
of sale.

314. No sale of immoveable property in execution of a decree shall become absolute until it has been confirmed by the Court.

If sale set  
aside, price  
to be returned  
to purchaser.

315. When a sale of immoveable property is set aside under section [310A],<sup>3</sup> 312 or 313,

or when it is found that the judgment-debtor had no saleable interest in the property which purported to be sold and the purchaser is for that reason deprived of it,

the purchaser shall be entitled to receive back his purchase-money (with or without interest as the Court may direct) from any person to whom the purchase-money has been paid.

The repayment of the said purchase-money and of the interest (if any) allowed by the Court may be enforced against such person under the rules provided by this Code for the execution of a decree for money.

Certificate to  
purchaser of  
immoveable  
property.

316. When a sale of immoveable property has become absolute in manner aforesaid, the Court shall grant a certificate<sup>4</sup> stating the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear the date of the confirmation

<sup>1</sup> Certain fees must be paid before an order is passed confirming the sale of a permanent tenure in Bengal, *see* the Bengal Tenancy Act, 1885 (VIII of 1885), s 13 (1), printed, Bengal Code, Vol. I, Ed. 1889, p. 517 For form of order, *see* Schedule IV, No 140, *infra*.

<sup>2</sup> This section is not applicable to sales of tenures or holdings in Bengal for arrears of rent, *see* Bengal Tenancy Act, 1885 (VIII of 1885), s 174 (3), printed, Bengal Code, Vol. I, Ed 1889, p 566

<sup>3</sup> Reference to "310A" was inserted by the Civil Procedure Code Amendment Act, 1894 (V of 1894), s 3, printed, General Acts, Vol. VI.

<sup>4</sup> For form of certificate, *see* Schedule IV, No. 150, *infra*.

of the sale; and, so far as regards the parties to the suit and persons claiming through or under them, the title to the property sold shall vest in the purchaser from the date of such certificate and not before :

Provided that the decree under which the sale took place was still subsisting at that date.

317. No suit shall be maintained against the certified purchaser on the ground that the purchase was made on behalf of any other person, or on behalf of some one through whom such other person claims.

Bar to suit  
against  
purchaser  
buying  
benámi

Nothing in this section shall bar a suit to obtain a declaration that the name of the certified purchaser was inserted in the certificate fraudulently or without the consent of the real purchaser.

318. When the property sold is in the occupancy of the judgment-debtor or of some person on his behalf or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property, and a certificate in respect thereof has been granted under section 316, the Court shall, on application by the purchaser, order<sup>1</sup> delivery to be made by putting the purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

Delivery of  
immoveable  
property in  
occupancy of  
judgment-  
debtor.

319 When the property sold is in the occupancy of a tenant or other person entitled to occupy the same, and a certificate in respect thereof has been granted under section 316, the Court shall order delivery thereof to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or in such other mode as may be customary, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

Delivery of  
immoveable  
property in  
occupancy of  
tenant.

320. The Local Government may, with the sanction of the Governor General in Council, declare, by notification in the official Gazette, that in any local area the execution of decrees in cases in which a Court has ordered any immoveable property to be sold, or the execution of any particular kind of such decrees, or the execution of decrees ordering the sale of any particular kind of, or interest in, immoveable property, shall be transferred to the Collector, and rescind or modify any such declaration.

Power to  
prescribe  
rules for  
transferring  
to Collector  
execution of  
certain  
decrees.

<sup>1</sup> For form of order, see Sch IV, No. 151, *infra*

(Part I.—Of Suits in General. Chapter XIX—Of the Execution of Decrees Sec. 321.)

Power to prescribe rules as to transmission, execution and retransmission of decrees

The Local Government may also, notwithstanding anything hereinbefore contained, from time to time prescribe rules<sup>1</sup> for the transmission of the decree from the Court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same, and for retransmitting the decree from the Collector to the Court

<sup>2</sup> Rules under this section may confer upon the Collector or any gazetted subordinate of the Collector all or any of the powers which the Court might exercise in the execution of the decree if the execution thereof had not been transferred to the Collector, including the powers of the Court under sections 294 and 312, and may provide for orders passed by the Collector or any gazetted subordinate of the Collector, or orders passed on appeal with respect to such orders being subject to appeal to and revision by superior revenue-authorities as nearly as may be as the orders passed by the Court, or orders passed on appeal with respect to such orders, would be subject to appeal to and revision by appellate or revisional Courts under this Code or other law for the time being in force if the decree had not been transferred to the Collector.

A power conferred by the rules upon the Collector or any gazetted subordinate of the Collector, or upon any appellate or revisional authority, shall not be exercisable by the Court or by any Court in exercise of any appellate or revisional jurisdiction which it has with respect to decrees or orders of the Court.

In executing a decree transferred to the Collector under this section the Collector and his subordinates shall be deemed to be acting judicially within the meaning of Act No. XVIII of 1850 (*an Act for the protection of Judicial officers*).

321. When the execution of a decree has been so transferred, the Collector may—

(a) proceed as the Court would proceed under section 305; or

Power of Collector when execution of decree is so transferred.

<sup>1</sup> For notifications prescribing such rules in—

Bombay	. . . . .	see	Bombay List of Local Rules and Orders, Ed 1896, Vol I, pp 398-406;
Burma	. . . . .	see	Burma Rules Manual, Ed 1897, pp 110 and 111;
North-Western Provinces and Oudh	. . . . .	see	North-Western Provinces and Oudh List of Local Rules and Orders, Ed 1894, pp 111 and 112;
The Central Provinces	. . . . .	see	Central Provinces List of Local Rules and Orders, Ed 1896, pp 155, 157

<sup>2</sup> The last three paragraphs of s 320 were added by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 30. printed, General Acts, Vol. V, Ed 1898, p 232

(Part I.—Of Suits in General. Chapter XIX.—Of the Execution of Decrees Secs. 322-322B.)

- (b) raise the amount of the decree by letting in perpetuity, or for a term, on payment of a premium, or by mortgaging, the whole or any part of the property ordered to be sold; or
- (c) sell the property ordered to be sold or so much thereof as may be necessary.

322. When the execution of a decree, not being a decree ordering the sale of immoveable property, in pursuance of a contract specifically affecting the same, but being a decree for money in satisfaction of which the Court has ordered the sale of immoveable property, has been so transferred, the Collector, if, after such enquiry as he thinks necessary, he has reason to believe that all the liabilities of the judgment-debtor can be discharged without a sale of the whole of his available immoveable property, may proceed as hereinafter provided.

Procedure of Collector when execution of decree is so transferred.

322A. In the case mentioned in section 322, the Collector shall publish a notice calling upon—

Notice to be given to decree-holders and to persons having claims on property.

- (a) every person holding a decree for money against the judgment-debtor capable of execution by sale of his immoveable property, and which such decree-holder desires to have so executed, and every holder of a decree for money in execution of which proceedings for the sale of such property are pending, to produce before the Collector a copy of the decree, and a certificate from the Court which passed or is executing the same, declaring the amount recoverable thereunder;
- (b) every person having any claim on the said property to submit to the Collector a statement of such claim, and to produce the documents, if any, by which it is evidenced.

Such notice shall be in the language of the district, and shall allow a period of sixty days from the date of its publication for compliance therewith. It shall be published by being posted in the court-house of the Court which made the original order under section 304, and at such other places (if any) as the Collector thinks fit. Where the address of any such decree-holder or claimant is known, a copy of the notice shall be sent to him by post or otherwise.

322B. Upon the expiration of the said period the Collector shall appoint a day for hearing any representations which the judgment-debtor and the decree-holders or claimants (if any) may desire to make, and for holding such enquiry as he may deem necessary for informing

Amount of money-decree to be ascertained, and immoveable property

(Part I.—Of Suits in General Chapter XIX—Of the Execution of Decrees. Secs. 322C-323.)

available for  
their satis-  
faction

himself as to the nature and extent of such decrees and claims and of the judgment-debtor's immoveable property, and may, from time to time, adjourn such hearing and enquiry.

If there be no dispute as to the fact or extent of the liability of the judgment-debtor to any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims, or as to the liability of any such property for the satisfaction of such decrees or claims, the Collector shall draw up a statement, specifying the amount to be recovered for the discharge of such decrees, the order in which such decrees and claims are to be satisfied, and the immoveable property available for that purpose.

If any such dispute arises, the Collector shall refer the same, with a statement thereof and his own opinion thereon, to the Court which made the original order under section 304, and shall, pending the reference, stay proceedings relating to the subject thereof. The Court shall dispose of the dispute if the matter thereof be within its jurisdiction, or transmit the case to a competent Court for disposal, and the final decision shall be communicated to the Collector. The Collector shall then draw up a statement as above provided in accordance with such decision.

When Dis-  
trict Court  
may issue  
notices and  
hold en-  
quiry.

322C.<sup>1</sup> The Collector may, instead of himself issuing the notices and holding the enquiry required by sections 322A and 322B, draw up a statement specifying the circumstances of the judgment-debtor and of his immoveable property so far as they are known to the Collector or appear in the records of his office, and forward such statement to the District Court; and such Court shall thereupon issue the notices, hold the inquiry and draw up the statement required by sections 322A and 322B, and transmit such statement to the Collector.

Effect of  
decision of  
Court as  
to dispute  
arising under  
section 322B  
or 322C.  
Scheme for  
liquidation  
of money-  
decrees

322D. The decision by the Court of any dispute arising under section 322B or section 322C shall, as between the parties thereto, have the force of, and be appealable as, a decree.

323. Whenever the amount to be recovered and the property avail-

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<sup>1</sup> Under the Bengal, North-Western Provinces and Assam Civil Courts Act, 1887 (XII of 1887), the High Court has power to authorize Subordinate Judges and Munsifs to take cognizance of references by Collectors under s 322C, *see* the Bengal, North-Western Provinces and Assam Civil Courts Act, 1887 (XII of 1887), s 23 (2) (c), printed, Assam Code, Ed 1897, p 196

(Part I.—Of Suits in General. Chapter XIX.—Of the Execution of Decrees. Sec. 323)

able have been determined as provided in section 322B or 322C, the Collector may—

- (1) if it appears that the amount cannot be recovered without the sale of the whole of the property; available, proceed to sell such property; or, if it appears that the amount with interest (if any) in accordance with the decree, and, when not decreed, with interest (if any) at such rate as he thinks reasonable, may be recovered without such sale;
- (2) raise such amount and interest (notwithstanding any order under section 304)—
  - (a) by letting in perpetuity or for a term, on payment of a premium, the whole or any part of the said property; or
  - (b) by mortgaging the whole or any part of such property; or
  - (c) by selling part of such property; or
  - (d) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale; or
  - (e) partly by one of such modes, and partly by another or others of such modes.
- (3) For the purpose of managing under this section the whole or any part of such property, the Collector may exercise all the powers of its owner.
- (4) For the purpose of improving the saleable value of the property available or any part thereof, or rendering it more suitable for letting or managing, or for preserving the property from sale in satisfaction of an incumbrance, the Collector may discharge the claim of any incumbrancer, which has become payable, or compound the claim of any incumbrancer whether it has become payable or not, and, for the purpose of providing funds to effect such discharge or composition, may mortgage, let or sell any portion of the property which he deems sufficient. If any dispute arises as to the amount due on any incumbrance with which the Collector proposes to deal under this paragraph, he may institute a suit in the proper Court, either in his own name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two arbitrators, one to be chosen by each party, or of an umpire to be named by such arbitrators.

(Part I.—Of Suits in General. Chapter XIX—Of the Execution of Decrees. Secs. 324-324A.)

In proceeding under paragraphs (2), (3) and (4) of this section the Collector shall be subject to such rules<sup>1</sup> consistent with this Act as may, from time to time, be made in this behalf by the Chief Controlling Revenue-authority.

Recovery of  
balance if  
any, after  
letting or  
manage-  
ment

324. If, on the expiration of the letting or management under section 323, the amount to be recovered has not been realized, the Collector shall notify the fact in writing to the judgment-debtor or his representative in interest, stating at the same time that, if the balance necessary to make up the said amount is not paid to the Collector within six weeks of the date of such notice, he will proceed to sell the whole or a sufficient part of the said property; and, if on the expiration of the said six weeks the said balance is not so paid, the Collector shall sell such property or part accordingly.

Collector  
to render  
accounts  
to Civil  
Court.

324A. The Collector shall, from time to time, render to the Court which made the original order under section 304 an account of all moneys which come to his hands and of all charges incurred by him in the exercise and performance of the powers and duties conferred and imposed on him under the provisions of this Chapter, and shall hold the balance at the disposal of the Court.

Such charges shall include all debts and liabilities from time to time due to the Government in respect of the property or any part thereof, the rent (if any) from time to time due to a superior holder in respect of such property or part, and (if the Collector so directs) the expenses of witnesses summoned by him.

Application  
of balance

Such balance shall be applied by the Court as follows:—

*firstly*, in providing for the maintenance of such members of the judgment-debtor's family (if any) as are entitled to be maintained out of the income of the property, to such amount in the case of each member as the Court thinks fit; and

<sup>1</sup> For notifications framing such rules in—

The North-Western Provinces and Oudh, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p 112;

Burma *see* Burma Rules Manual, Ed 1897, p 114,

The Central Provinces *see* Central Provinces List of Local Rules and Orders, Ed 1896, p 45

In the case of the Central Provinces, the notifications are also issued under s 320 of the Code

*(Part I—Of Suits in General. Chapter XIX.—Of the Execution of Decrees. Secs. 325-325A.)*

*secondly*, where the Collector has proceeded under section 321, in satisfaction of the original decree in execution of which the Court ordered the sale of immoveable property, or otherwise as the Court may under section 295 direct; or

*thirdly*, where the Collector has proceeded under section 322, in keeping down the interest on incumbrances on the property, and (when the judgment-debtor has no other sufficient means of subsistence) in providing for his subsistence to such amount as the Court thinks fit; and in discharging rateably the claims of the original decree-holder and any other decree-holders who have complied with the said notice, and whose claims were included in the amount ordered to be recovered;

and no other holder of a decree for money shall be entitled to be paid out of such property or balance until the decree-holders who have obtained such order have been satisfied,

and the residue, if any, shall be paid to the judgment-debtor or such other person, if any, as the Court directs.

325. When the Collector sells any property under this Chapter, he shall put it up to public auction, in one or more lots as he thinks fit, and may—

Sales how to be conducted.

(a) fix a reasonable reserved price for each lot;

(b) adjourn the sale for a reasonable time whenever he deems the adjournment necessary for the purpose of obtaining a fair price for the property, recording his reasons for such adjournment,

(c) buy in the property offered for sale, and re-sell the same by public auction or private contract, as he thinks fit.

325A. So long as the Collector can exercise or perform in respect of the judgment-debtor's immoveable property, or any part thereof, any of the powers or duties conferred or imposed on him by sections 322 to 325 (both inclusive), the judgment-debtor or his representative in interest shall be incompetent to mortgage, charge, lease or alienate such property or part except with the written permission of the Collector, nor shall any Civil Court issue any process against such property or part in execution of a decree for money.

Restrictions as to alienation by judgment-debtor or his representative, and prosecution of remedies by decree-holders.

During the same period no Civil Court shall issue any process of execution either against the judgment-debtor or his property in respect

of any decree for the satisfaction whereof provision has been made by the Collector under section 323.

The same period shall be excluded in calculating the period of limitation applicable to the execution of any decree affected by the provisions of this section in respect of any remedy of which the decree-holder has thereby been temporarily deprived.

Provision where property is in several districts.

**325B.** When the property of which the sale has been ordered is situate in more districts than one, the powers and duties conferred and imposed on the Collector by sections 321 to 325 (both inclusive) shall, from time to time, be exercised and performed by such one of the Collectors of the said districts as the Local Government may by general rule or special order direct

Powers of Collector to compel attendance of parties and witnesses and production of documents

**325C.** In exercising the powers conferred on him by sections 322 to 325 (both inclusive), the Collector shall have the powers of a Civil Court to compel the attendance of parties and witnesses and the production of documents.

When Court may authorise Collector to stay public sale of land.

**326.** When, in any local area in which no declaration under section 320 is in force, the property attached consists of land or of a share in land, and the Collector represents to the Court that the public sale of the land or share is objectionable, and that satisfaction of the decree may be made within a reasonable period by a temporary alienation or management of the land or share, the Court may authorize<sup>1</sup> the Collector to provide for such satisfaction in the manner recommended by him, instead of proceeding to a sale of the land or share. In such case the provisions of sections 320, paragraph 2, to 325C (both inclusive) shall apply, as far as they are applicable.

Local rules as to sales of land in execution of decrees for money.

**327.** The Local Government may, from time to time, with the sanction of the Governor General in Council, make special rules for any local area imposing conditions in respect of sale of any class of interests in land in execution of decrees for money, where such interests are so uncertain or undetermined as, in the opinion of the Local Government, to make it impossible to fix their value:

and if, when this Code comes into operation in any local area, any special rules as to sale of land in execution of decrees are in force therein, the Local Government may continue such rules in force, or may, from

<sup>1</sup> For form of authorization, see Sch IV, No 152, *infra*

time to time, with the sanction of the Governor General in Council, modify the same.

All rules so made or continued, and all such modifications of the same, shall be published in the local official Gazette,\* and shall thereupon have the force of law.

#### H.—Of Resistance to Execution<sup>1</sup>

328. If, in the execution of a decree for the possession of property, the officer charged with the execution of the warrant is resisted or obstructed by any person, the decree-holder may complain to the Court at any time within one month from the time of such resistance or obstruction.

Procedure  
in case of  
obstruction  
to execution  
of decree

The Court shall fix a day for investigating the complaint, and shall summon the party against whom the complaint is made to answer the same.

329. If the Court is satisfied that the obstruction or resistance was occasioned by the judgment-debtor or by some person at his instigation, the Court shall inquire into the matter of the complaint, and pass such order<sup>2</sup> as it thinks fit.

Procedure  
in case of  
obstruction  
by judgment-  
debtor or at  
his instiga-  
tion

330. If the Court is satisfied that the resistance or obstruction was without any just cause, and that the complainant is still resisted or obstructed in obtaining possession of the property by the judgment-debtor or some other person at his instigation, the Court may, at the instance of the decree-holder and without prejudice to any penalty to which such judgment-debtor or other person may be liable, under the Indian Penal Code<sup>3</sup> or any other law, for such resistance or obstruction, commit the judgment-debtor or such other person to jail for a term which may extend to thirty days, and direct that the decree-holder be put into the possession of the property.

Procedure  
when obstruc-  
tion con-  
tinues

331. If the resistance or obstruction has been occasioned by any person other than the judgment-debtor claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the claim shall be numbered and registered as a suit between the decree-holder as plaintiff and the claimant as defendant;

Procedure  
in case of  
obstruction  
by claimant  
in good faith,  
other than  
judgment-  
debtor.

<sup>1</sup> Ss 328 to 333 (both inclusive, so far as they relate to moveable property) extend to Provincial Small Cause Courts, *see* s 5 and the second schedule

<sup>2</sup> For form of order of committal, *see* Sch IV, No 153, *infra*

<sup>3</sup> Printed, General Acts, Vol I, Ed 1898, p 240

## (Part I.—Of Suits in General Chapter XIX—Of the Execution of Decrees. Secs 332-334.)

and the Court shall, without prejudice to any proceedings to which the claimant may be liable under the Indian Penal Code<sup>1</sup> or any other law for the punishment of such resistance or obstruction, proceed to investigate the claim in the same manner and with the like power as if a suit for the property had been instituted by the decree-holder against the claimant under the provisions of Chapter V,

and shall pass such order as it thinks fit for executing or staying execution of the decree.

Every such order shall have the same force as a decree, and shall be subject to the same conditions as to appeal or otherwise.

Procedure  
in case of  
person dis-  
possessed of  
property  
disputing  
right of  
decree-holder  
to be put into  
possession.

332. If any person other than the judgment-debtor is dispossessed of any property in execution of a decree, and such person disputes the right of the decree-holder to dispossess him of such property under the decree on the ground that the property was *bonâ fide* in his possession on his own account or on account of some person other than the judgment-debtor, and that it was not comprised in the decree, or that, if it was comprised in the decree, he was not a party to the suit in which the decree was passed, he may apply<sup>2</sup> to the Court.

If after examining the applicant it appears to the Court that there is probable cause for making the application, the Court shall proceed to investigate the matter in dispute; and, if it finds that the ground mentioned in the first paragraph of this section exists, it shall make an order that the applicant recover possession of the property, and, if it does not find as aforesaid, it shall dismiss the application.

In hearing applications under this section, the Court shall confine itself to the grounds of dispute above specified.

The party against whom an order is passed under this section may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit, if any, the order shall be final.

Transfer of  
property by  
judgment-  
debtor after  
institution  
of suit.  
Resisting or

333. Nothing in section 331 or 332 applies to a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree is made.

334. If the purchaser of any immoveable property sold in execution

<sup>1</sup> Printed, General Acts, Vol I, Ed 1898, p 240

<sup>2</sup> For limitation of such applications, see the Indian Limitation Act, 1877 (XV of 1877), Sch. II, art 165, printed, General Acts, Vol III, p 104, and s 3, *supra*

## (Part I.—Of Suits in General. Chapter XIX—Of the Execution of Decrees. Secs 335-336)

of a decree be resisted or obstructed by the judgment-debtor or any one on his behalf in obtaining possession of the property, the provisions of this Chapter relating to resistance or obstruction to a decree-holder in obtaining possession of the property adjudged to him shall be applicable.

obstructing purchaser in obtaining possession of immoveable property

335. If the purchaser of any such property is resisted or obstructed by any person other than the judgment-debtor claiming in good faith a right to the present possession thereof, or if, in delivering possession thereof, any such person is dispossessed, the Court, on the complaint of the purchaser or the person so dispossessed, shall inquire into the matter of the resistance, obstruction or dispossession, as the case may be, and pass such order thereon as it thinks fit.

Obstruction by claimant other than judgment-debtor.

The party against whom such order is passed may institute a suit<sup>1</sup> to establish the right which he claims to the present possession of the property; but, subject to the result of such suit, if any, the order shall be final.

*I.—Of Arrest and Imprisonment<sup>2</sup>*

336. A judgment-debtor may be arrested in execution of a decree at any hour and on any day and shall as soon as practicable be brought before the Court, and his imprisonment may be in the civil jail of the district in which the Court ordering the imprisonment is situate, or, when such jail does not afford suitable accommodation, in any other place<sup>3</sup> which the Local Government may appoint for the confinement of persons ordered by the Courts of such district to be imprisoned:

Place of judgment-debtor's imprisonment.

Provided as follows:—

Proviso.

- (a) for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset or before sunrise, and no outer door of a dwelling-house shall be broken open; but, when the officer authorized to make the arrest has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe the judgment-debtor is to be found: provided that,

<sup>1</sup> For limitation of such suits, see the Indian Limitation Act, 1877 (XV of 1877), Sch II, art 2, printed, General Acts, Vol III, p 86

<sup>2</sup> Ss 336 to 343 (both inclusive) extend to Provincial Small Cause Courts, see s 5 and the second schedule

For power to refuse an application for imprisonment of judgment-debtor in Ajmere and Merwára, see the Ajmere Courts Regulation, 1877 (I of 1877), s 31, printed, Ajmere Code, Ed 1893, p 147, and s 3, *supra*

<sup>3</sup> For list of such places in Burma, see Notification No 217, Burma Gazette, 1897, Pt I, p 256

(Part I—Of Suits in General. Chapter XIX.—Of the Execution of Decrees. Sec. 337.)

if the room be in the actual occupancy of a woman who is not the judgment-debtor, and who, according to the customs of the country does not appear in public, the officer shall give notice to her that she is at liberty to withdraw; and, after allowing a reasonable time for her to withdraw and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of making the arrest:

- (b) when the decree in execution of which a judgment-debtor is arrested is a decree for money and the judgment debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him

The Local Government may, by notification published in the official Gazette, direct<sup>1</sup> that, whenever a judgment-debtor is arrested in execution of a decree for money and brought before the Court under this section, the Court shall inform him that he may apply under Chapter XX to be declared an insolvent, and that he will be discharged if he has not committed any act of bad faith regarding the subject of his application and if he places all his property in possession of a receiver appointed by the Court.

If after such publication the judgment-debtor express his intention so to apply, and if he furnish sufficient security that he will appear when called upon, and that he will within one month apply under section 344 to be declared an insolvent, the Court shall release him from arrest:

But, if he fails so to apply, the Court may either direct the security to be realized or commit him to jail in execution of the decree.

In the case of a surety such security may be realized in manner provided by section 253.

Warrant  
for arrest

337. Every warrant<sup>2</sup> for the arrest of the judgment-debtor shall

<sup>1</sup> For notifications making such direction in—

- |  |   |
|--|---|
| (1) Assam . . . . .                            | see Assam Manual of Local Rules and Orders, Ed 1893, p. 191,                          |
| (2) Bombay . . . . .                           | see Bombay List of Local Rules and Orders, Ed 1896, Vol I, p 406;                     |
| (3) Burma . . . . .                            | see Burma Rules Manual, Ed. 1897, p 115;  |
| (4) Central Provinces . . . . .                | see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 44;                |
| (5) Madras . . . . .                           | see Madras List of Local Rules and Orders, Ed. 1898, Vol I, p 195;                    |
| (6) North-Western Provinces and Oudh . . . . . | see North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p 112; |

<sup>2</sup> For form of warrant, see Sch. IV, No. 154, *infra*

(Part I—Of Suits in General. Chapter XIX—Of the Execution of Decrees. Sec. 337A.)

direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs, if any, to which he is liable, be sooner paid.

to direct judgment-debtor to be brought up

337A.<sup>1</sup> (1) When a judgment-debtor appears before the Court in obedience to a notice issued under section 245B, or is brought before the Court after being arrested in execution of a decree for money, and it appears to the Court that the judgment-debtor is unable from poverty or other sufficient cause to pay the amount of the decree or, if that amount is payable by instalments, the amount of any instalment thereof, the Court may, upon such terms, if any, as it thinks fit, make an order disallowing the application for his arrest and imprisonment, or directing his release, as the case may be

Proceedings on appearance of judgment-debtor in obedience to notice under section 245B, or after arrest in execution of decree for money.

(2) Before making an order under sub-section (1) the Court may take into consideration any allegation of the decree-holder touching any of the following matters, namely:—

- (a) the decree being for a sum for which the judgment-debtor was bound as a trustee or as acting in any other fiduciary capacity to account;
- (b) the transfer, concealment or removal by the judgment-debtor of any part of his property after the date of the institution of the suit in which the decree was made, or the commission by him after that date of any other act of bad faith in relation to his property, with the object or effect of obstructing or delaying the decree-holder in the execution of the decree;
- (c) any undue or unreasonable preference given by the judgment-debtor to any of his other creditors;
- (d) his refusal or neglect to pay the amount of the decree or some part thereof when he has or since the date of the decree has had the means of paying it;
- (e) the likelihood of his absconding or leaving the jurisdiction of the Court with the object or effect mentioned in clause (b) of this sub-section.

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<sup>1</sup> S 337A was inserted by the Debtors' Act, 1888 (VI of 1888), s 4, printed, General Acts, Vol V, Ed. 1898, p 229.

(Part I.—Of Suits in General. Chapter XIX—Of the Execution of Decrees. Secs. 338-339.)

(3) While any of the matters mentioned in sub-section (2) are being considered, the Court may in its discretion order the judgment-debtor to be imprisoned, or leave him in the custody of an officer of the Court, or release him on his furnishing sufficient security for his appearance on the requisition of the Court.

(4) A judgment-debtor released under this section may be re-arrested.

(5) If the Court does not make such an order as is mentioned in sub-section (1), it shall cause the judgment-debtor to be arrested if he has not already been arrested and, subject to the other provisions of this Code, commit him to jail.

Scales of  
subsistence-  
allowances.

338. The Local Government may, from time to time, prescribe scales,<sup>1</sup> graduated according to rank, race and nationality, of monthly allowances payable for the subsistence of judgment-debtors.

Judgment-  
debtor's  
subsistence-  
money.

339. No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into Court such sum as, having regard to the scales so fixed, the Judge thinks sufficient for the subsistence of the judgment-debtor from his arrest until he can be brought before the Court.

When a judgment-debtor is committed to jail in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the said scales, or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

The monthly allowance fixed by the Court shall be supplied by the party on whose application the decree has been executed, by monthly payments in advance before the first day of each month.

The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is committed to jail, and the subsequent payments (if any) shall be made to the officer in charge of the jail.

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<sup>1</sup>For instances of notifications prescribing such scales, see Burma Rules Manual, Ed 1897, p. 115; North-Western Provinces and Oudh List of Local Rules and Orders, Ed 1894, p 113; Madras List of Local Rules and Orders, Ed 1898, Vol. I, p 195

340. Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in jail shall be deemed to be costs in the suit:

Subsistence-money to be costs in suit

Provided that the judgment-debtor shall not be detained in jail or arrested on account of any sum so disbursed.

341. The judgment-debtor shall be discharged from jail—

Release of judgment-debtor

- (a) on the amount mentioned in the warrant of committal being paid to the officer in charge of the jail, or
- (b) on the decree being otherwise fully satisfied, or
- (c) at the request of the person on whose application he has been imprisoned; or
- (d) on such person omitting to pay the allowance as hereinbefore directed, or
- (e) if the judgment-debtor be declared an insolvent as hereinafter provided, or
- (f) when the term of his imprisonment, as limited by section 342, is fulfilled.

Provided that, in the second, third and fifth cases mentioned in this section, the judgment-debtor shall not be discharged without the order of the Court.

A judgment-debtor discharged under this section is not thereby discharged from his debt; but he cannot be re-arrested under the decree in execution of which he was imprisoned.

342. No person shall be imprisoned in execution of a decree for a longer period than six months;

Imprisonment not to exceed six months  
When not to exceed six weeks.

or for a longer period than six weeks if the decree be for the payment of a sum of money not exceeding fifty rupees

343. The officer entrusted with the execution of the warrant shall endorse thereupon the day on, and the manner in, which it was executed, and, if the latest day specified in the warrant for the return thereof has been exceeded, the reason of the delay, or, if it was not executed, the reason why it was not executed, and shall return the warrant with such endorsement to the Court

Endorsement on warrant.

If the endorsement is to the effect that such officer is unable to execute the warrant, the Court shall examine him on oath touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result.

CHAPTER XX<sup>1</sup>

## OF INSOLVENT JUDGMENT-DEBTORS.

Power to  
apply for  
declaration of  
insolvency

344. Any judgment-debtor arrested or imprisoned in execution of a decree for money, or against whose property an order of attachment has been made in execution of such a decree, may apply in writing to be declared an insolvent.

Any holder of a decree for money may apply in writing that the judgment-debtor may be declared an insolvent

Every such application shall be made to the District Court<sup>2</sup> within the local limits of whose jurisdiction the judgment-debtor resides or is in custody

Contents of  
application.

345. The application, when made by the judgment-debtor, shall set forth—

- (a) the fact of his arrest or imprisonment, or that an order for the attachment of his property has been made, the Court by whose order he was arrested or imprisoned, or by which the order of attachment was made, and, where he has been arrested or imprisoned, the place in which he is in custody;
- (b) the amount, kind and particulars of his property, and the value of any such property not consisting of money;
- (c) the place or places in which such property is to be found;
- (d) his willingness to put it at the disposal of the Court;
- (e) the amount and particulars of all pecuniary claims against him; and
- (f) the names and residences of his creditors so far as they are known to or can be ascertained by him.

The application, when made by the holder of a decree for money, shall set forth the date of the decree, the Court by which it was passed, the amount remaining due thereunder, and the place where the judgment-debtor resides or is in custody.

Subscription  
and verifica-  
tion of appli-  
cation.

346. The application shall be signed and verified by the applicant in manner hereinbefore prescribed<sup>3</sup> for signing and verifying plaints.

<sup>1</sup> Ss 344 to 349 of Ch XX have been modified by Ch IV of the Dekhan Agriculturists' Relief Act, 1879 (XVII of 1879), as regards proceedings under that Act For Act XVII of 1879, see the revised edition, as modified up to 1st March, 1895, published by the Legislative Department

<sup>2</sup> See s 360, *infra*

<sup>3</sup> See ss 51 and 52, *supra*

347. The Court shall fix a day for hearing the application, and shall cause a copy thereof, with a notice in writing of the time and place at which it will be heard, to be stuck up in Court and served at the applicant's expense—

Service of copy of application and notice.

where the applicant is the judgment-debtor—on the holder of the decree in execution of which he was arrested or imprisoned or the order of attachment was made, or on the pleader of such decree-holder, and on the other creditors (if any) mentioned in the application:

where the applicant is the decree-holder—on the judgment-debtor or his pleader.

The Court may, if it thinks fit, publish at the applicant's expense the application in such official Gazettes and public newspapers as it thinks fit

Where the applicant is the judgment-debtor, the Court may exempt him from any payments under this section if satisfied that he is unable to make them

348. The Court may also, if it thinks fit, cause a like copy and notice to be served on any other person alleging himself to be a creditor of the applicant and applying for leave to be heard on the application.

Power to serve other creditors.

349. Where the judgment-debtor<sup>1</sup> [is in custody under the foregoing provisions of this Code] the Court may, pending the hearing under section 350, order him to be immediately committed to jail, or leave him in the custody of the officer to whom the service of the warrant was entrusted, or release him on his furnishing sufficient security that he will appear when called upon.

Powers of Court as to judgment-debtor under arrest

350. On the day so fixed, or on any subsequent day to which the Court may adjourn the hearing, the Court shall examine the judgment-debtor, in the presence of the persons on whom such notice has been served or their pleaders, as to his then circumstances and as to his future means of payment, and shall hear the said decree-holder, the other creditors mentioned in the application, and the other persons (if any) alleging themselves to be creditors, in opposition to the judgment-debtor's discharge; and may, if it thinks fit, grant time to the said decree-holder and other creditors or persons to adduce evidence showing that the judgment-debtor is not entitled to be declared an insolvent.

Procedure at hearing

<sup>1</sup> These words in s 349 were substituted for the original words by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 31 (1), printed, General Acts, Vol V, Ed 1893, p 232

## (Part I.—Of Suits in General Chapter XX—Of Insolvent Judgment-debtors Secs. 351-353)

Declaration  
of insolvency  
and appoint-  
ment of  
Receiver.

**351.** If the Court is satisfied—

- (a) that the statements in the application are substantially true;
- (b) that the judgment-debtor has not, with intent to defraud his creditors, concealed, transferred or removed any part of his property since the institution of the suit in which was passed the decree in execution of which he was arrested or imprisoned, or the order of attachment was made, or at any subsequent time;
- (c) that he has not, knowing himself to be unable to pay his debts in full, recklessly contracted debts or given an unfair preference to any of his creditors by any payment or disposition of his property;
- (d) that he has not committed any other act of bad faith regarding the matter of the application,

the Court may declare him to be an insolvent, and may also, if it thinks fit, make an order appointing a Receiver of his property, or, if it does not appoint such Receiver, may discharge the insolvent.

If the Court is not so satisfied, it shall make an order rejecting the application

Creditors  
to prove  
their debts

**352.** The creditors mentioned in the application, and the other persons (if any) alleging themselves to be creditors of the insolvent, shall then produce evidence of the amount and particulars of their respective pecuniary claims against him, and the Court shall by order determine the persons who have proved themselves to be the insolvent's creditors and their respective debts; and shall frame a schedule of such persons and debts; and the declaration under section 351 shall be deemed to be a decree in favour of each of the said creditors for their said respective debts.

Schedule to  
be framed.

A copy of every such schedule shall be stuck up in the court-house.

Nothing in this section shall be deemed to entitle a partner in an insolvent-firm or, when he has died before the insolvency, his legal representative, to prove in competition with the creditors of the firm.

Appli-  
cations by  
unscheduled  
creditors

**353.** Any creditor of the insolvent who is not mentioned in such schedule may apply<sup>1</sup> to the Court for permission to produce evidence of the amount and particulars of his pecuniary claims against the insolvent,

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<sup>1</sup> For period of limitation in the case of such applications, see the Indian Limitation Act, 1877 (XV of 1877), Sch II, art 174, and s 3 of this Act For Act XV of 1877, see General Acts, Vol III, Ed 1898, p 75

and, in case the applicant proves himself to be a creditor of the insolvent, for an order directing his name to be inserted in the schedule as a creditor for the debt so proved

Any creditor mentioned in the schedule may apply<sup>1</sup> to the Court for an order altering the schedule so far as regards the amount, nature or particulars of his own debt, or to strike out the name of another creditor, or to alter the schedule so far as regards the amount, nature or particulars of the debt of another creditor

In the case of any application under this section, the Court, after causing such notices as it thinks fit to be served, at the applicant's expense, on the insolvent and the other creditors, and hearing their objections, if any, may comply with or reject the application.

354. Every order under section 351 shall be published in the local official Gazette and <sup>2</sup>[every order under that section appointing a Receiver] shall operate to vest in the Receiver all the insolvent's property (except the particulars specified in the first proviso to section 260), whether set forth in his application or not.

Effect of  
order ap-  
pointing  
Receiver.

355. The Receiver so appointed shall give such security as the Court may direct and shall possess himself of all such property, except as aforesaid,

Receiver to  
give security  
and collect  
assets

and on his certifying that the insolvent has placed him in possession thereof, or has done everything in his power for that purpose, the Court may discharge the insolvent upon such conditions (if any) as the Court thinks fit

Discharge of  
insolvent

356. The Receiver shall proceed under the direction of the Court—

Duty of  
Receiver.

- (a) to convert the property into money
- (b) to pay thereout debts, fines and penalties (if any) due by the insolvent to Government.
- (c) to pay the said decree-holder's costs:
- (d) to discharge, according to their respective priorities, all debts secured by mortgage of the insolvent's property :

<sup>1</sup> For period of limitation in the case of such applications, see the Indian Limitation Act, 1877 (XV of 1877), Sch II, art 174, and s 3 of this Act [Printed, General Acts, Vol III]

<sup>2</sup> These words in s 354 were inserted by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 31 (2), printed, General Acts, Vol V, Ed 1898, p 232

(Part I—Of Suits in General Chapter XX—Of Insolvent Judgment-debtors Secs 357-358.)

(e) to distribute the balance among the scheduled creditors rateably according to the amounts of their respective debts and without any preference.

His right to remuneration.

and such Receiver may retain as a remuneration for the performance of his duties a commission, to be fixed by the Court, not exceeding the rate of five per centum upon the amount of the balance so distributed (the amount of the commission so retained being deemed a distribution), and shall deliver the surplus, if any, to the insolvent or his legal representative:

Delivery of surplus.

Provided that, in any local area in which a declaration has been made under section 320 and is in force, no sale of immoveable property paying revenue to Government or held or let for agricultural purposes shall be made by the Receiver; but, after he has sold the other property of the insolvent, the Court shall ascertain (a) the amount required to satisfy the claims of the scheduled creditors after deducting the moneys already received, (b) the immoveable property of the insolvent remaining unsold, and (c) the incumbrances, if any, existing thereon, and shall forward a statement to the Collector containing the particulars aforesaid; and thereupon the Collector shall proceed to raise the amount so required by the exercise of such of the powers conferred on him by sections 322 to 325, both inclusive, as he thinks fit, and subject to the provisions of those sections so far as they may be applicable; and shall hold at the disposal of the Court all sums that may come to his hands by such exercise

Effect of discharge.

357. An insolvent discharged under section 351 or 355 shall not be arrested or imprisoned on account of any of the scheduled debts. But (subject to the provisions of section 358) his property, whether previously, or subsequently acquired (except the particulars specified in the first proviso to section 266 and except the property vested in the Receiver), shall, by order of the Court, be liable to attachment and sale until the debts due to the scheduled creditors are satisfied to the extent of one-third, or until the expiry of twelve years from the date of the order of discharge under section 351 or 355.

Declaration that insolvent is discharged from liability

358. If the aggregate amount of the scheduled debts is two hundred rupees or a less sum, the Court may, and in any case after the scheduled debts have been satisfied to the extent of one-third, or after the expiry of twelve years from the order of discharge, the Court shall declare the insolvent discharged as aforesaid absolved from further liability in respect of such debts.

359. Whenever, at the hearing under section 350, it is proved that the applicant has—

Procedure  
in case of  
dishonest  
applicant.

(a) been guilty, in his application, of any concealment or of wilfully making any false statement as to the debts due by him, or respecting the property belonging to him, whether in possession or in expectancy, or held for him in trust,

(b) fraudulently concealed, transferred or removed any property; or

(c) committed any other act of bad faith regarding the matter of the application,

the Court shall, at the instance of any of his creditors, sentence him by order in writing to imprisonment for a term which may extend to one year from the date of committal;

or the Court may, if it think fit, send him to the Magistrate to be dealt with according to law

330.<sup>1</sup> The Local Government may, by notification<sup>2</sup> in the official Gazette, invest any Court other than a District Court with the powers conferred on District Courts by sections 344 to 359 (both inclusive), and the District Judge may transfer to any Court situate in his district and so invested any case instituted under section 344.

Investment  
of other  
Court with  
powers of  
District  
Courts.

<sup>3</sup> [A Court so invested may entertain an application under section 344 by any person who has been arrested or imprisoned, or against whose property an order of attachment has been made, in execution of a decree for money passed by that Court.]

Transfer  
of cases.

360A.<sup>4</sup> Nothing in this Chapter shall apply to any Court having jurisdiction within the limits of the town of Calcutta, Madras or Bombay.

Inapplicabil-  
ity of this  
Chapter to  
Presidency-  
towns

<sup>1</sup> S 360 extends to Provincial Small Cause Courts, *see* s 5 and the second schedule. The last paragraph was repealed by the Burma Courts Act, 1885 (XIV of 1885), s 3, and is omitted. Act XIV of 1885 is repealed by Act XI of 1889. For Act XI, *see* Burma Code, Ed 1889

<sup>2</sup> For notifications under this section in—

Bombay . . . . . *see* Bombay List of Local Rules and Orders, Ed 1896, Vol I, pp 406 and 408;

North-Western Provinces and Oudh . . . *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p 113;

Madras . . . . . *see* Madras List of Local Rules and Orders, Ed 1898, Vol 1, p 196

<sup>3</sup> The second paragraph of s 360 was substituted for the original paragraph by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 31 (3), printed, General Acts, Vol V, Ed 1898, p 232

<sup>4</sup> S 360A was inserted by Act VII of 1888, s 31 (4).

(Part II—Of Incidental Proceedings Chapter XXI—Of the Death, :  
 Marriage and Insolvency of Parties. Secs 361-363)

## PART II. OF INCIDENTAL PROCEEDINGS.

### CHAPTER XXI<sup>1</sup>

#### OF THE DEATH, MARRIAGE AND INSOLVENCY OF PARTIES

No abate-  
ment by  
party's  
death, if  
right to sue  
survives

**361.** The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives

#### *Illustrations*

(a) A covenants with B and C to pay an annuity to B during C's life B and C sue A to compel payment B dies before the decree the right to sue survives to C, and the suit does not abate

(b) In the same case all the parties die before decree The right to sue survives to the representative of the survivor of B and C, and he may continue the suit against A's representative.

(c) A sues B for libel A dies. The right to sue does not survive, and the suit abates

(d) A, a member of a Hindu joint family under the Mitákshará law, institutes a suit for partition of the family property. A dies leaving B, a minor son, his heir The right to sue survives to B, and the suit does not abate.

Procedure  
in case of  
death of one  
of several  
plaintiffs or  
defendants,  
if right to sue  
survives.

**362.** If there be more plaintiffs or defendants than one, and any of them dies, and if the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

Procedure  
where one of  
several  
plaintiffs  
dies and right  
to sue does  
not survive  
to surviving  
plaintiffs  
alone.

**363.**<sup>2</sup> If there are more plaintiffs than one, and any of them dies, and if the right to sue does not survive to the surviving plaintiff or plaintiffs alone but survives to him or them and the legal representative of the deceased plaintiff jointly, the Court may cause the legal representative, if any, of the deceased plaintiff to be made a party, and shall thereupon cause an entry to that effect to be made on the record and proceed with the suit.

<sup>1</sup> See order L in the first schedule to the Supreme Court of Judicature Amendment Act, 1875 (38 & 39 Vict., c 77)

This Chapter extends to Provincial Courts of Small Causes, *see* s 5 and the second schedule

In this Chapter, the words "plaintiff" "defendant" and "suits" include an appellant, a respondent and an appeal respectively, *see* s 582, *infra*

<sup>2</sup> S 363 was substituted for the original ss 363 and 364 by the Civil Procedure Code Amendment Act 1888 (VII of 1888), s 32 (1), printed, General Acts, Vol V, Ed 1898, p 252

(Part II—Of Incidental Proceedings Chapter XXI—Of the Death,  
Marriage and Insolvency of Parties Secs 365-368.)

**365.**<sup>1</sup> In case of the death of a sole plaintiff or sole surviving plaintiff, the legal representative of the deceased may, where the right to sue survives, apply to the Court to have his name entered on the record in place of the deceased plaintiff, and the Court shall thereupon enter his name and proceed with the suit.

Procedure in case of death of sole, or sole surviving, plaintiff

**366.** If within the time limited by law no such application be made to the Court by any person claiming to be the legal representative of the deceased plaintiff, the Court may pass an order that the suit shall abate, and shall, on the application<sup>2</sup> of the defendant, award to the defendant the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff,

Abatement where no application by representative of deceased plaintiff.

or the Court may, if it think proper, on the application<sup>2</sup> of the defendant, and upon such terms as to costs or otherwise as it thinks fit, pass such other order as it thinks fit for bringing in the legal representative of the deceased plaintiff, or for proceeding with the suit in order to a final determination of the matter in dispute, or for both those purposes.

*Explanation*—A certificate of heirship, or a certificate to collect debts, does not of itself constitute the person holding it the legal representative of the deceased. But when the person holding any such certificate obtains thereby property belonging to the deceased, he may be treated as a legal representative liable in respect of such property.

**367.** If any dispute arise as to who is the legal representative of a deceased plaintiff, the Court may either stay the suit until the fact has been determined in another suit, or decide at or before the hearing of the suit who shall be admitted to be such legal representative for the purpose of prosecuting the suit

Procedure in case of dispute as to representative of deceased plaintiff

**368.** If there be more defendants than one and any of them die before decree and the right to sue does not survive against the surviving defendant or defendants alone,

and also in case of the death of a sole defendant, or sole surviving defendant where the right to sue survives,

Procedure in case of death of one of several defendants, or of sole, or sole surviving, defendant.

the plaintiff may make an application<sup>3</sup> to the Court, specifying the name, description and place of abode of any person whom he alleges to be

<sup>1</sup> S 365 was substituted by Act VII of 1888, s 32 (2), printed, General Acts, Vol V.

<sup>2</sup> For limitation of such applications, see the Limitation Act, 1877 (XV of 1877), Sch II, art 171A, and s 3 of the Code. For Act XV of 1877, see Vol III of the General Acts, Ed 1898, p 75

<sup>3</sup> For limitation of such applications, see the Indian Limitation Act, 1877 (XV of 1877), Sch II, art 171B, and s 3 of this Act. For Act XV of 1877, see General Acts, Vol III, Ed 1898, p 75

*(Part II —Of Incidental Proceedings Chapter XXI —Of the Death,  
Marriage and Insolvency of Parties. Secs. 369-370.)*

the legal representative of the deceased defendant, and whom he desires to be made the defendant in his stead.

The Court shall thereupon enter the name of such representative on the record in the place of such defendant,

and shall issue a summons to such representative to appear on a day to be therein mentioned to defend the suit;

and the case shall thereupon proceed in the same manner as if such representative had originally been made a defendant and had been a party to the former proceedings in the suit:

Provided that the person so made defendant may object that he is not the legal representative of the deceased defendant, or may make any defence appropriate to his character as such representative

When the plaintiff fails to make such application within the period prescribed therefor, the suit shall abate, unless he satisfies the Court that he had sufficient cause for not making the application within such period

<sup>1</sup> [The legal representative of a deceased defendant may apply to have himself made a defendant in place of the deceased defendant, and the provisions of this section, so far as they are applicable, shall apply to the application and to the proceedings and consequences ensuing thereon ]

Suit not  
abated by  
marriage of  
female party.

**369.** The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgment, and, where the decree is against a female defendant, it may thereupon be executed against her alone

If the case is one in which the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and, in case of judgment for the wife, execution of the decree may with such permission be issued upon the application of the husband, where the husband is by law entitled to the subject-matter of the decree.

When plaintiff's bankruptcy or insolvency bars suit.

**370.** The bankruptcy or insolvency of a plaintiff in any suit which his assignee or the receiver appointed under section 351 might maintain for the benefit of his creditors shall not bar the suit, unless such assignee or receiver declines to continue the suit and to give security for the costs thereof within such time as the Court may order.

Procedure when assignee fails

If the assignee or receiver neglect or refuse to continue the suit and to give such security within the time so ordered, the defendant may apply for

<sup>1</sup> The last paragraph of s 368 was added by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s. 32 (3), printed, General Acts, Vol V, Ed 1898, p. 232.

(Part II—Of Incidental Proceedings. Chapter XXI.—Of the Death, Marriage and Insolvency of Parties Secs. 371-372A Chapter XXII—Of the Withdrawal and Adjustment of Suits Sec. 373)

the dismissal of the suit on the ground of the plaintiff's bankruptcy or insolvency, and the Court may dismiss the suit and award to the defendant the costs which he has incurred in defending the same, to be proved as a debt against the plaintiff's estate

to continue suit or give security.

371. When a suit abates or is dismissed under this Chapter, no fresh suit shall be brought on the same cause of action.

Effect of abatement or dismissal.

But the person claiming to be the legal representative of the deceased or bankrupt or insolvent plaintiff may apply<sup>1</sup> for an order to set aside the order for abatement or dismissal, and, if it be proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit

Application to set aside abatement or dismissal.

372. In other cases of assignment, creation or devolution of any interest pending the suit, the suit may, with the leave of the Court, given either with the consent of all parties or after service of notice in writing upon them, and hearing their objections, if any, be continued by or against the person to whom such interest has come either in addition to or in substitution for the person from whom it has passed, as the case may require.

Procedure in case of assignment pending suit

XV of 1877.

372A.<sup>2</sup> The provisions of section 5 of the Indian Limitation Act, 1877, applicable to appeals shall apply to applications under sections 365, 366, 368 and 371.

Power for Court to extend period of limitation prescribed for certain applications.

## CHAPTER XXII.<sup>3</sup>

### OF THE WITHDRAWAL AND ADJUSTMENT OF SUITS

373. If, at any time after the institution of the suit, the Court is satisfied on the application of the plaintiff (a) that the suit must fail by reason of some formal defect, or (b) that there are sufficient grounds for permitting him to withdraw from the suit or to abandon part of his claim with liberty to bring a fresh suit for the subject-matter of the suit or in respect of the part so abandoned, the Court may grant such permission on such terms as to costs or otherwise as it thinks fit.

Power to allow plaintiff to withdraw with liberty to bring fresh suit

<sup>1</sup> For limitation of such applications, see the Indian Limitation Act, 1877 (XV of 1877), Sch II, art 171C, printed, General Acts, Vol III, Ed 1898, p 75, and s 3, *supra*

<sup>2</sup> S 372A was added by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 32 (4), printed, General Acts, Vol V, Ed 1898, p 232.

<sup>3</sup> This Chapter (XXII) extends to Provincial Small Cause Courts, see s 5 and the second schedule.

(Part II—Of Incidental Proceedings Chapter XXII—Of the Withdrawal and Adjustment of Suits Secs 374-375A. Chapter XXIII—Of Payment into Court Secs 376-377)

If the plaintiff withdraw from the suit, or abandon part of his claim, without such permission, he shall be liable for such costs as the Court may award, and shall be precluded from bringing a fresh suit for the same matter or in respect of the same part

Nothing in this section shall be deemed to authorize the Court to permit one of several plaintiffs to withdraw without the consent of the others

Limitation  
law not  
affected by  
first suits.

374. In any fresh suit instituted on permission granted under the last preceding section, the plaintiff shall be bound by the law of limitation<sup>1</sup> in the same manner as if the first suit had not been brought

Compromise  
of suit

375. If a suit be adjusted wholly or in part by any lawful agreement or compromise, or if the defendant satisfy the plaintiff in respect to the whole or any part of the matter of the suit, such agreement, compromise or satisfaction shall be recorded, and the Court shall pass a decree in accordance therewith so far as it relates to the suit, and such decree shall be final, so far as relates to so much of the subject-matter of the suit as is dealt with by the agreement, compromise or satisfaction.

Application  
for execution  
of decrees  
not  
affected

375A.<sup>2</sup> Nothing in this Chapter shall apply to any application or other proceeding in any suit subsequent to the decree

*Explanation.*—An application to the appellate Court pending an appeal is not an application subsequent to the decree appealed from within the meaning of this section

## CHAPTER XXIII<sup>3</sup>

### OF PAYMENT INTO COURT.

Deposit by  
defendant  
of amount  
in satis-  
faction  
of claim.

376. The defendant in any suit to recover a debt or damages may, at any stage of the suit, deposit in Court such sum of money as he considers a satisfaction in full of the claim

Notice of  
deposit.

377. Notice<sup>4</sup> in writing of the deposit shall be given through the Court by the defendant to the plaintiff, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the plaintiff on his application.

<sup>1</sup> See the Limitation Act, 1877 (XV of 1877), printed, General Acts, Vol III, Ed. 1898, p 75

<sup>2</sup> S 375A was added by the Indian Limitation Act and Civil Procedure Code Amendment Act, 1892 (VI of 1892), s 2, printed, General Acts, Vol VI

<sup>3</sup> This Chapter (XXIII) extends to Provincial Small Cause Courts, see s 5 and the second schedule

<sup>4</sup> For form of notice, see Sch IV, No 155, *infra*.

(Part II—Of Incidental Proceedings Chapter XXIII—Of Payment into Court. Secs 378-379 Chapter XXIV—Of Requiring Security for Costs. Sec. 380)

378. No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited be in full of the claim or fall short thereof

Interest on deposit not allowed to plaintiff after notice.

379. If the plaintiff accept such amount only as satisfaction in part of his claim, he may prosecute his suit for the balance; and, if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff must pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim.

Procedure where plaintiff accepts deposit as satisfaction in part

If the plaintiff accept such amount as satisfaction in full of his claim, he shall present to the Court a statement to that effect, and such statement shall be filed and the Court shall pass judgment accordingly, and, in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation.

Procedure where he accepts it as satisfaction in full.

#### *Illustrations*

(a) A owes B Rs 100. B sues A for the amount, having made no demand for payment and having no reason to believe that the delay caused by making a demand would place him at a disadvantage. On the plaint being filed, A pays the money into Court. B accepts it in full satisfaction of his claim, but the Court should not allow him any costs, the litigation being presumably groundless on his part

(b) B sues A under the circumstances mentioned in Illustration (a). On the plaint being filed A disputes the claim. Afterwards A pays the money into Court. B accepts it in full satisfaction of his claim. The Court should also give B his costs of suit, A's conduct having shown that the litigation was necessary.

(c) A owes B Rs 100 and is willing to pay him that sum without suit. B claims Rs 150 and sues A for that amount. On the plaint being filed A pays Rs. 100 into Court and disputes only his liability to pay the remaining Rs 50. B accepts the Rs. 100 in full satisfaction of his claim. The Court should order him to pay A's costs.

### CHAPTER XXIV<sup>1</sup>

#### OF REQUIRING SECURITY FOR COSTS.

380. If, at the institution or at any subsequent stage of a suit, it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are, residing out of British India, and that such plaintiff does not, or that no one of such plaintiffs does, possess any sufficient

When security for costs may be required from plaintiff at any stage of suit.

<sup>1</sup> This Chapter (XXIV) extends to Provincial Small Cause Courts, see s 5 and the second schedule

(Part II.—Of Incidental Proceedings. Chapter XXIV—Of Requiring Security for Costs. Secs. 381-382.)

immovable property within British India independent of the property in suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs, within a time to be fixed by the order, to give security for the payment of all costs incurred and likely to be incurred by any defendant.

<sup>1</sup>[On the application of any defendant in a suit for money in which the plaintiff is a woman the Court may at any stage of the suit make a like order if it is satisfied that such plaintiff does not possess any sufficient immovable property within British India independent of the property in suit.]

Effect of  
failure to  
furnish  
security

381. In the event of such security not being furnished within the time so fixed, the Court shall dismiss the suit unless the plaintiff or plaintiffs be permitted to withdraw therefrom under the provisions of section 373,<sup>2</sup> [or show good cause why such time should be extended, in which case the Court may extend it]

Where a suit is dismissed under this section, the plaintiff may apply for an order to set the dismissal aside, and, if it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the Court shall set aside the dismissal upon such terms as to security, costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit

The dismissal shall not be set aside unless the plaintiff has served the defendant with notice in writing of his application

The provisions of the Indian Limitation Act, 1877,<sup>3</sup> with respect to an application under section 103, and of this Code with respect to an appeal from an order rejecting such an application, shall apply, so far as they can be made applicable, to an application under this section for an order to set aside the dismissal of a suit, and to an appeal from an order rejecting such an application respectively

Residence out  
of British  
India.

382. Whoever leaves British India under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of British India within the meaning of section 380.

<sup>1</sup> The last paragraph of s 380 was added by the Debtors Act, 1888 (VI of 1888), s 5, printed, General Acts, Vol V, Ed 1898, p 219

<sup>2</sup> This part of s 381 was added by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 33, printed, General Acts, Vol V, Ed 1898, p 232

<sup>3</sup> Printed, General Acts, Vol III, Ed 1898, p 75

CHAPTER XXV.<sup>1</sup>

## OF COMMISSIONS.

## A.—Commissions to examine Witnesses.

383. Any Court may in any suit issue a commission for the examination on interrogatories or otherwise of persons resident within the local limits of its jurisdiction, who are exempted under this Code from attending the Court, or who are from sickness or infirmity unable to attend it

Cases in which Court may issue commission to examine witness

384. Such order may be made by the Court either of its own motion, or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined.

Order for commission

385. The commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court thinks fit to execute the same

When witness resides within Court's jurisdiction.

386. Any Court may in a suit issue a commission<sup>2</sup> for the examination of—

Persons for whose examination commission may issue.

- (a) any person resident beyond the local limits of its jurisdiction;
- (b) persons who are about to leave such limits before the date on which they are required to be examined in Court; and
- (c) civil and military officers of Government who cannot, in the opinion of the Judge, attend the Court without detriment to the public service.

Such commission may be issued to any Court, not being a High Court or the Court of the Recorder of Rangoon, within the local limits of whose jurisdiction such person resides, <sup>3</sup>[or to any pleader or other person whom the Court issuing the commission may, subject to any rules of the High Court in this behalf, thinks fit to appoint]

The Court on issuing any commission under this section shall direct whether the commission shall be returned to itself or to any subordinate Court.

<sup>1</sup> This Chapter (XXV) extends to Provincial Small Cause Courts, *see* s 5 and the second schedule

The Chapter is applicable to the securing of the testimony of witnesses in connection with criminal matters pending in suits or tribunals in Foreign States, the term "suit" being construed so as to include a proceeding against a criminal, *see* the Foreign Jurisdiction and Extradition Act, 1879 (XXI of 1879), s 19, printed, General Acts, Vol III, p. 288 *Cf* also ss 2 and 3 of the Portuguese Treaty Act, 1880 (IV of 1880), which expired in 1891

<sup>2</sup> For form of commission, *see* Sch IV, No 156, *infra*

<sup>3</sup> These words in s 386 were substituted for the words "or to any pleader of a High Court whom the Court issuing the commission thinks fit to appoint" by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 34, printed, General Acts, Vol V, Ed 1898, p 232

Commission to examine witness not within British India

387. When any Court to which application is made for the issue of a commission for the examination of a person residing at any place not within British India is satisfied that his evidence is necessary, the Court may issue such commission.

Court to examine witness pursuant to commission.

388. Every Court receiving a commission for the examination of any person shall examine him pursuant thereto.

Return of commission with depositions of witnesses.

389. After the commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court out of which it issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order, and the commission and the return thereto, and the evidence taken under it, shall (subject to the provisions of the next following section) form part of the record of the suit.

When depositions may be read in evidence.

390. Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless—

- (a) the person who gave the evidence is beyond the jurisdiction of the Court, or dead, or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in Court, or
- (b) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in the last preceding clause, and authorizes the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

Provisions as to execution and return of commissions to apply to commissions issued by foreign Courts.

391. The provisions hereinbefore contained as to the execution and return of commissions shall apply to commissions issued by—

- (a) Courts situate beyond the limits of British India and established by the authority of Her Majesty or of the Governor General in Council, or
- (b) Courts situate in any part of the British Empire other than British India, or
- (c) Courts of any foreign country for the time being in alliance with Her Majesty.

*B—Commissions for local Investigations.*

392. In any suit or proceeding<sup>1</sup> in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits, or damages or annual nett profits, and the same cannot be conveniently conducted by the Judge in person the Court may issue a commission<sup>2</sup> to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:

Commission to make local investigations.

Provided that, when the Local Government has made rules<sup>3</sup> as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

393. The Commissioner, after such local inspection as he deems necessary, and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed with his name, to the Court

Procedure of Commissioner

The report of the Commissioner and the evidence taken by him, (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit, may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to the manner in which he has made the investigation.

Report and depositions to be evidence in suit.

Commissioner may be examined in person.

*C—Commissions to examine Accounts.*

394. In any suit in which an examination or adjustment of accounts is necessary, the Court may issue a commission<sup>2</sup> to such person as it thinks fit directing him to make such examination or adjustment.

Commission to examine or adjust accounts.

395. The Court shall furnish the Commissioner with such part of the proceedings and such detailed instructions as appear necessary,

Court to give Commissioner necessary instructions.

and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the enquiry, or also to report his own opinion on the point referred for his examination.

<sup>1</sup> For power to order local inquiries to ascertain prevailing rate of rent and to determine incidents of tenancy in Bengal, see the Bengal Tenancy Act, 1885 (VIII of 1885), s 31 (b), and s 158, printed, Bengal Code, Vol I, p 503

<sup>2</sup> For form of commission, see Sch IV, No 157, *infra*

<sup>3</sup> For instance of notification making such rules, see Central Provinces List of Local Rules and Orders, Ed 1896, p 44.

Court to receive Commissioner's proceedings or direct further enquiry.

The proceedings of the Commissioner shall be received in evidence in the suit, unless the Court has reason to be dissatisfied with them, in which case the Court shall direct such further inquiry as is requisite.

*D.—Commission to make Partition.*

Commission to make partition of non-revenue paying immoveable property

**396.** In any suit in which the partition of immoveable property<sup>1</sup> not paying revenue to Government appears to the Court to be necessary, the Court, after ascertaining the several parties interested in such property and their several rights therein, may issue a commission to such persons as it thinks fit to make a partition according to such rights.

Procedure of Commissioners.

The Commissioners shall ascertain and inspect the property, and shall divide the same into as many shares as may be directed by the order under which the commission issues, and shall allot such shares to the parties, and may, if authorized thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

The Commissioners shall then prepare and sign a report, or (if they cannot agree) separate reports, appointing the share of each party, and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall either quash the same and issue a new commission, or (where the Commissioners agree in their report) pass a decree in accordance therewith.

*E.—General Provisions.*

Expenses of commission to be paid into Court

**397.** Before issuing any commission under this Chapter, the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission to be, within a time to be fixed by the Court, paid into Court by the party at whose instance or for whose benefit the commission is issued.

Powers of Commissioners.

**398.** Any Commissioner appointed under this Chapter may, unless otherwise directed by the order of appointment,—

- (a) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him;

<sup>1</sup> See s 4, *supra*.

(Part II—Of Incidental Proceedings. Chapter XXV—Of Commissions Secs 399-400 Part III—Of Suits in Particular Cases Chapter XXVI—Suits by Paupers. Secs 401-402)

(b) call for and examine documents and other things relevant to the subject of enquiry;

(c) at any reasonable time enter upon or into any land or building mentioned in the order.

399. The provisions of this Code relating to the summoning, attendance and examination of witnesses,<sup>1</sup> and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this Chapter, whether the commission in execution of which they are so required has been issued by a Court situate within, or by a Court situate beyond, the limits of British India.

Attendance, examination and punishment of witnesses before Commissioner.

For the purposes of this section the Commissioner shall be deemed to be a Court of Civil Judicature

400. Whenever a commission is issued under this Chapter, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders.

Court to direct parties to appear before Commissioner. Procedure *ex parte*.

If the parties do not so appear the Commissioner may proceed *ex parte*

### PART III.

#### OF SUITS IN PARTICULAR CASES.

##### CHAPTER XXVI<sup>2</sup>

##### SUITS BY PAUPERS.

401. Subject to the following rules, any suits may be brought by a pauper.

Suits may be brought *in forma pauperis*.

*Explanation.*—A person is a “pauper” when he is not possessed of sufficient means to enable him to pay the fee prescribed by law<sup>3</sup> for the plaint in such suit, or, where no such fee is prescribed, when he is not entitled to property worth one hundred rupees other than his necessary wearing-apparel and the subject-matter of the suit.

402. No suit shall be brought by a pauper to recover compensation for loss of caste, libel, slander, abusive language or assault.

What suits excepted.

<sup>1</sup> See Chs XIV and XV, *supra*

<sup>2</sup> This Chapter (XXVI) extends to Provincial Small Cause Courts, *see* s 5 and the second schedule

<sup>3</sup> See the Court-fees Act, 1870 (VI of 1870), printed, Vol II of the General Acts, Ed 1898, p. 124.

Application to be in writing.

Contents of application.

403. The application<sup>1</sup> for permission to sue by a pauper shall be in writing, and shall contain the particulars required by section 50 in regard to plants in suits: a schedule of any moveable or immoveable property belonging to the petitioner, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner hereinbefore prescribed<sup>2</sup> for the signing and verification of plants.

Presentation of application.

404. Notwithstanding anything contained in section 36, the application shall be presented to the Court by the applicant in person, unless he is exempted from appearing in Court under section 640 or section 641, in which case the application may be presented by duly authorized agent who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.

Rejection of application.

405. If the application be not framed or presented in the manner prescribed by sections 403 and 404, the Court shall reject it.

Examination of applicant.

406. If the application be in proper form and duly presented, the Judge may, if he thinks fit, examine the petitioner, or his agent, when the applicant is allowed to appear by agent, regarding the merits of the claim and the property of the applicant.

If presented by agent, Court may order applicant to be examined by commission  
Rejection of application

When the application is presented by an agent, the Court may, if it thinks fit, order that the applicant be examined by a commission in the manner in which the examination of an absent witness may be taken under the provisions of this Code.<sup>3</sup>

407. If it appear to the Court—

- (a) that the applicant is not a pauper, or
- (b) that he has, within the two months next before the presentation of the application, disposed of any property fraudulently or with a view to obtain the benefit of this Chapter, or
- (c) that his allegations do not show a right to sue in such Court, or
- (d) that he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter,

the Court shall reject the application.

<sup>1</sup> For court-fee on such applications, see the Court-fees Act, 1870 (VII of 1870), Sch II, art 2, printed, General Acts, Vol II, Ed 1898, p 124

<sup>2</sup> See ss. 51 & 52, *supra*.

<sup>3</sup> See Ch XXV, *supra*.

(Part III—Of Suits in Particular Cases. Chapter XXVI.—Suits by Paupers. Secs. 408-412.)

408. If the Court sees no reason to refuse the application on any of the grounds stated in section 407, it shall fix a day (of which at least ten days' previous notice shall be given to the opposite party and the Government pleader<sup>1</sup>) for receiving such evidence as the applicant may adduce in proof of his pauperism, and for hearing any evidence which may be adduced in disproof thereof

Notice of day for receiving evidence of applicant's pauperism.

409<sup>2</sup> On the day so fixed, or as soon thereafter as may be convenient, the Court shall examine the witnesses (if any) produced by either party, and may cross-examine the applicant or his agent, and shall make a memorandum of the substance of their evidence.

Procedure at hearing

The Court shall also here any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court as herein provided, the applicant is or is not subject to any of the prohibitions specified in section 407.

The Court shall then either allow or refuse to allow the applicant to sue as a pauper.

410. If the application be granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted under Chapter V, except that the plaintiff shall not be liable to any court-fee (other than fees payable for service of process) in respect of any petition, appointment of a pleader or other proceeding connected with the suit.

Procedure if application admitted.

411. If the plaintiff succeed in the suit, the Court shall calculate the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; and such amount shall be a first charge on the subject-matter of the suit, and shall also be recoverable by the Government from any party ordered by the decree to pay the same, in the same manner as costs of suit are recoverable under this Code.

Costs when pauper succeeds.

Recovery of court-fees.

412. If the plaintiff fails in the suit, or if he is dispaupered, or if the suit is dismissed under section 97 or 98, the Court shall order the plaintiff, or any person made, under section 32, co-plaintiff to the suit, to pay the court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper;

Procedure when pauper fails.

<sup>1</sup> For notification appointing in Bombay the Shirastadar and the Deputy Commissioner, Thar and Parkar, to perform in certain Courts the functions imposed by Ch. XXVI of the Code on the Government Pleader, see Bombay List of Local Rules and Orders, Ed. 1896, Vol I, p 408

<sup>2</sup> So much of this section as relates to the making of a memorandum does not apply to the chartered High Courts, or to the Punjab Chief Court in the exercise of their original civil jurisdiction, see s 638, *infra*, and the Punjab Courts Act, 1884 (XVIII of 1884), s 16 (2), see the revised edition, as modified up to 1st April, 1891, published by the Legislative Department.

(Part III.—Of Suits in Particular Cases Chapter XXVI—Suits by Paupers Secs 413-415. Chapter XXVII—Suits by or against Government or Public Officers. Secs. 416-417)

and, if it find that the suit was frivolous or vexatious, it may also punish the plaintiff with fine not exceeding one hundred rupees, or with imprisonment for a term which may extend to a month, or with both.

Refusal  
to allow  
applicant  
to sue as  
pauper to bar  
subsequent  
application  
of like nature

413. An order of refusal made under section 409 to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, provided that he first pays the costs (if any) incurred by Government in opposing his application for leave to sue as a pauper.

Dispauper-  
ing

414. The Court may, on motion by the defendant, or by the Government Pleader,<sup>1</sup> of which one week's notice in writing has been given to the plaintiff, order the plaintiff to be dispaupered—

(a) if he is guilty of vexatious or improper conduct in the course of the suit;

(b) if it appears that his means are such that he ought not to continue to sue as a pauper; or

(c) if he has entered into any agreement with reference to the subject-matter of the suit, under which any other person has obtained an interest in such subject-matter.

Costs.

415. The costs of an application for permission to sue as a pauper and of an inquiry into pauperism are costs in the suit.

## CHAPTER XXVII.<sup>2</sup>

### SUITS BY OR AGAINST GOVERNMENT OR PUBLIC OFFICERS.

Suits by  
or against  
Secretary of  
State in  
Council.

416. Suits by or against the Government shall be instituted by or against (as the case may be) the Secretary of State for India in Council.

Persons  
authorized  
to act for  
Government

417. Persons being *ex officio* or otherwise authorized to act for Government in respect of any judicial proceeding shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of Government.<sup>3</sup>

<sup>1</sup> For Bombay notification under this section and s 408, see note to latter section, *supra*

<sup>2</sup> This Chapter (XXVII) extends to Provincial Small Cause Courts, see s 5 and the second schedule

<sup>3</sup> For notification appointing the Government Prosecutor, Mandalay, to be the Agent of the Secretary of State for civil cases in the Civil Court, Mandalay, and for civil cases and appeals heard in Mandalay, see Notification No 299, Burma Gazette, 1891, Pt I, p 520

418. In suits by the Secretary of State for India in Council, instead of inserting in the plaint<sup>1</sup> the name and description and place of abode of the plaintiff, it shall be sufficient to insert the words "The Secretary of State for India in Council."

Plaints in suits by Secretary of State in Council.

419. The Government Pleader in any Court<sup>2</sup> [or such other person as the Local Government may for any Court appoint in this behalf.] shall be the agent of the Government for the purpose of receiving processes against the said Secretary of State in Council issuing out of such Court

Agent for Government to receive the process

420. The Court, in fixing the day for the said Secretary of State in Council to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channels, and for the issue of instructions to the Government Pleader to appear and answer on behalf of the said Secretary of State in Council or the Government, and may extend the time at its discretion.

Appearance and answer by Secretary of State in Council.

421. The Court may also, in any case in which the Government Pleader is not accompanied by any person on the part of the said Secretary of State in Council, who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

Attendance of person able to answer questions relating to suit against Government.

422. Where the defendant is a public officer, the Court may send a copy of the summons to the head of the office in which the defendant is employed, for the purpose of being served on him, if it appear to the Court that the summons may be most conveniently so served.

Service on public officers.

423. If the public officer on receiving the summons considers it proper to make a reference to the Government before answering to the plaint, he may apply to the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel,

Extension of time to enable officer to make reference to Government.

and the Court upon such application may extend the time for so long as appears to be requisite.

424.<sup>3</sup> No suit shall be instituted against the said Secretary of State in Council, or against a public officer in respect of an act purporting to be

Notice previous to suing Secre-

<sup>1</sup> See s 50, *supra*

<sup>2</sup> These words in s 419 were inserted by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 36, printed, General Acts, Vol V, Ed 1898, p 232

<sup>3</sup> For exemption of suits of the classes mentioned in s 77 of the Punjab Tenancy Act, 1887 (XVI of 1887), from the operation of s 424, see s 54 of that Act, printed, Punjab Code, Ed 1888, p 273

tary of State  
in Council  
or public  
officer.

done by him in his official capacity, until the expiration of two months next after notice in writing has been, in the case of the Secretary of State in Council, delivered to, or left at the office of, a Secretary to the Local Government or the Collector of the district, and, in the case of a public officer, delivered to him or left at his office, stating the cause of action and the name and place of abode of the intending plaintiff<sup>1</sup> [and the relief which he claims]; and the plaint<sup>2</sup> must contain a statement that such notice has been so delivered or left

Arrest in  
such suits

**425.** No warrant of arrest shall be issued in such suit without the consent in writing of the District Judge.

Application  
where Gov-  
ernment  
undertakes  
defence.

**426.** If the Government undertakes the defence of a suit against a public officer, the Government Pleader, upon being furnished with authority to appear and answer to the plaint, shall apply to the Court, and upon such application the Court shall cause a note of his authority to be entered in the register.<sup>3</sup>

Procedure  
where no  
such applica-  
tion made.

**427.** If such application is not made by the Government Pleader on or before the day fixed in the notice for the defendant to appear and answer to the plaint, the case shall proceed as in a suit between private parties, except that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree

Defendant  
not liable to  
arrest before  
judgment.

Exemption  
of public  
officers from  
personal  
appearance.

**428.** In a suit against a public officer in respect of such act as aforesaid, the Court shall exempt the defendant from appearing in person when he satisfies the Court that he cannot absent himself from his duty without detriment to the public service

Procedure  
where decree  
against Gov-  
ernment or  
public officer.

**429.** When the decree is against the said Secretary of State in Council or against a public officer in respect of such act as aforesaid, a time shall be specified in the decree within which it shall be satisfied, and, if the decree is not satisfied within the time so specified, the Court shall report the case for the orders of the Local Government.

Execution shall not issue on any such decree unless it remains unsatisfied for the period of three months computed from the date of the report.

<sup>1</sup> These words in s 424 were inserted by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 36, printed, General Acts, Vol. V, Ed 1898, p 232.

<sup>2</sup> See s. 50, *supra*

<sup>3</sup> See s 58 (last clause), *supra*.

(Part III—Of Suits in Particular Cases. Chapter XXVIII—Suits by Aliens and by or against Foreign and Native Rulers. Secs 430-432.)

CHAPTER XXVIII<sup>1</sup>

## SUITS BY ALIENS AND BY OR AGAINST FOREIGN AND NATIVE RULERS

430. Alien enemies residing in British India with the permission of the Governor General in Council, and alien friends may sue in the Courts of British India as if they were subjects of Her Majesty. When aliens may sue.

No alien enemy residing in British India without such permission, or residing in a foreign country, shall sue in any of such Courts

*Explanation*—Every person<sup>2</sup> residing in a foreign country, the Government of which is at war with the United Kingdom of Great Britain and Ireland, and carrying on business in that country without a license in that behalf under the hand of one of Her Majesty's Secretaries of State or of a Secretary to the Government of India, shall, for the purpose of the second paragraph of this section, be deemed to be an alien enemy residing in a foreign country.

431. A foreign State may sue in the Courts of British India.

Provided that—

When foreign State may sue

(a) it has been recognised by Her Majesty or the Governor General in Council, and

(b) the object of the suit is to enforce the private rights of the head or of the subjects of the foreign State.

The Court shall take judicial notice of the fact that a foreign State has not been recognized by Her Majesty or by the Governor General in Council

432. Persons specially appointed by order of Government at the request of any Sovereign Prince or ruling Chief, whether in subordinate alliance with the British Government or otherwise, and whether residing within or without British India, <sup>2</sup>[or at the request of any person competent in the opinion of the Government to act on behalf of such Prince or Chief,] to prosecute or defend any suit on his behalf, shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of such Prince or Chief. Persons specially appointed by Government to prosecute or defend for Princes or Chiefs.

<sup>3</sup> An appointment under this section may be made for the purpose of a specified suit or of several specified suits, or for the purpose of all such

<sup>1</sup>This Chapter (XXVIII) extends to Provincial Small Cause Courts, *see* s 5 and the second schedule

<sup>2</sup>These words in s 432 were inserted by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 37, printed, General Acts, Vol V, Ed 1898, p 232

<sup>3</sup>The last two paragraphs of s 432 were added by Act VII of 1888, s 37 (2)

For notification made under the power conferred by this section in Bombay, *see* p 403 of the Bombay List of Local Rules and Orders, Ed 1896, Vol I.

(Part III.—Of Suits in Particular Cases Chapter XXVIII—Suits by  
Aliens and by or against Foreign and Native Rulers. Sec. 433)

suits as it may from time to time be necessary to prosecute or defend on behalf of the Prince or Chief.

A person appointed under this section may authorize or appoint persons to make and do appearances, applications and acts in any such suit or suits as if he were himself a party to the suit or suits.

Suits against  
Princes,  
Chiefs, am-  
bassadors  
and envoys

**433.**<sup>1</sup> (1) Any such Prince or Chief, and any ambassador or envoy of a Foreign State, may, with the consent of the Governor General in Council, certified by the signature of one of the Secretaries to the Government of India (but not without such consent), be sued in any competent Court

(2) Such consent may be given with respect to a specified suit or to several specified suits, or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits, the Court in which the Prince, Chief, ambassador or envoy may be sued; but it shall not be given unless the Prince, Chief, ambassador or envoy—

(a) has instituted a suit in the Court against the person desiring to sue him, or

(b) by himself or another trades within the local limits of the jurisdiction of the Court, or

(c) is in possession of immovable property situate within those limits and is to be sued with reference to such possession or for money charged on that property.

(3) No such Prince, Chief, ambassador or envoy shall be arrested under this Code, and, except with the consent of the Governor General in Council certified as aforesaid, no decree shall be executed against the property of any such Prince, Chief, ambassador or envoy.

<sup>2</sup>(4) The Governor General in Council may, by notification in the Gazette of India, authorize a Local Government and any Secretary to that Government to exercise, with respect to any Prince, Chief, ambassador or envoy named in the notification, the functions assigned by the foregoing sub-sections to the Governor General in Council and a Secretary to the Government of India, respectively

<sup>1</sup> § 433 was substituted for the original section by the Civil Procedure Code Amendment Act 1888 (VII of 1888), s 38, printed, General Acts, Vol V, Ed 1898, p 232

<sup>2</sup> For notification issued under the powers conferred by this section in respect of the Governments of Madras, Bengal, the North-Western Provinces and Oudh, the Punjab, Central Provinces and Assam, see Gazette of India, 1889, Pt I, p 187; and as to the Government of Bombay, see Gazette of India, 1896, Pt I, p 322

(Part III—Of Suits in Particular Cases Chapter XXVIII.—Suits by Aliens and by or against Foreign and Native Rulers. Sec. 434. Chapter XXIX.—Suits by and against Corporations and Companies. Secs 435-436.)

(5) A person may, as a tenant of immoveable property, sue, without such consent as is mentioned in this section, a Prince, Chief, ambassador or envoy from whom he holds or claims to hold the property.

434.<sup>1</sup> A Sovereign Prince or ruling Chief may sue, and shall be sued, in the name of his State:

Style of Princes and Chiefs as parties to suits.

Provided that in giving the consent referred to in the last foregoing section the Governor General in Council or Local Government, as the case may be, may direct that any such Prince or Chief shall be sued in the name of an agent or in any other name.

## CHAPTER XXIX<sup>2</sup>

### SUITS BY AND AGAINST CORPORATIONS AND COMPANIES.

435. In suits by a Corporation, or by a Company authorized to sue and be sued in the name of an officer or of a trustee, the plaint may be subscribed and verified on behalf of the Corporation or Company by any director, secretary or other principal officer of the Corporation or Company, who is able to depose to the facts of the case.

Subscription and verification of plaint.

436. When the suit is against a Corporation, or against a Company authorized to sue and be sued in the name of an officer or of a trustee, the summons may be served—

Service on Corporation or Company.

- (a) by leaving it at the registered office (if any) of the Corporation or Company, or
- (b) by sending it by post in a letter addressed to such officer or trustee at the office (or, if there be more offices than one, at the principal office in British India) of the Corporation or Company, or
- (c) by giving it to any director, secretary or other principal officer of the Corporation or Company;

and the Court may require the personal appearance of any director, secretary or other principal officer of the Corporation or Company who may be able to answer material questions relating to the suit.

<sup>1</sup> S 434 is new. It was inserted by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 40, and the former s 434 was made s 229B (*supra*) by s 40 of the same Act.

<sup>2</sup> This Chapter (XXIX) extends to Provincial Small Cause Courts, *see* s 5 and the second schedule.

(Part III.—Of Suits in Particular Cases Chapter XXX—Suits by and against Trustees, Executors and Administrators Secs 437-439. Chapter XXXI—Suits by and against Minors and Persons of unsound mind. Sec 440)

CHAPTER XXX<sup>1</sup>

## SUITS BY AND AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS.

Represent-  
ation of  
beneficiaries  
in suits  
concerning  
property  
vested in  
trustees, etc.

437.<sup>2</sup> In all suits concerning property vested in a trustee, executor or administrator, when the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made such parties.<sup>3</sup>

Joinder of  
executors and  
administra-  
tors

438. When there are several executors or administrators, they shall all be made parties to a suit against one or more of them.

Provided that the executor's who have not proved their testator's will, and executors and administrators beyond the local limits of the jurisdiction of the Court, need not be made parties.

Husband of  
married  
executrix not  
to join

439. Unless the Court directs otherwise, the husband of a married administratrix or executrix shall not be a party to a suit by or against her.

CHAPTER XXXI.<sup>4</sup>

## SUITS BY AND AGAINST MINORS AND PERSONS OF UNSOUND MIND.

Minor must  
sue by next  
friend  
Costs.

440. Every suit by a minor shall be instituted in his name by an adult person, who in such suit shall be called the next friend of the minor, and may be ordered to pay any costs in the suit as if he were the plaintiff.

Suits on  
behalf of  
minor by  
persons  
other  
than the  
guardian  
where such  
has been  
appointed.

<sup>5</sup> If a minor has a guardian appointed or declared by an authority competent in this behalf, a suit shall not be instituted on behalf of the minor by any person other than such guardian except with the leave of the Court granted after notice to such guardian and after hearing any objection which he may desire to make with respect to the institution of the suit, and the Court shall not grant such leave unless it is of opinion

<sup>1</sup> This Chapter (XXX) extends to Provincial Small Cause Courts, *see* s 5 and the second schedule

<sup>2</sup> *See* Rule 7 of order XVI in the first schedule to the Supreme Court of Judicature Amendment Act, 1875 (38 & 39 Vict, c 77)

<sup>3</sup> *See* Ch III, *supra*

<sup>4</sup> This Chapter (XXXI) extends to Provincial Small Cause Courts, *see* s 5 and the second schedule

<sup>5</sup> This paragraph was added by s 53 (A) of the Guardian and Wards Act, 1890 (VIII of 1890), printed, General Acts, Vol V, Ed 1898, p 384

(Part III—Of Suits in Particular Cases. Chapter XXXI—Suits by and against Minors and Persons of unsound mind. Secs 441-446 )

that it is for the welfare of the minor that the person professing to institute the suit in the name of the minor should be permitted to do so

441. Every application to the Court on behalf of a minor (other than an application under section 449) shall be made by his next friend, or his guardian for the suit.

Applications to be made by next friend or guardian *ad litem* Plaintiff filed without next friend to be taken off file. Costs.

442. If a plaint be filed by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented. Notice of such application shall be given to such person by the defendant, and the Court, after hearing his objections, if any, may make such order in the matter as it thinks fit.

443. Where the defendant to a suit is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor, to put in the defence for such minor, and generally to act on his behalf in the conduct of the case<sup>1</sup> \* \* \* \*

Guardian *ad litem* to be appointed by Court

<sup>2</sup>[Where an authority competent in this behalf has appointed or declared a guardian or guardians of the person or property, or both, of the minor, the Court shall appoint him or one of them as the case may be to be the guardian for the suit under this section unless it considers, for reasons to be recorded by it, that some other person ought to be so appointed]

444. Every order made in a suit or on any application before the Court, in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, if the pleader of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, with costs to be paid by such pleader.

Order obtained without next friend or guardian may be discharged. Costs

445. Any person being of sound mind and full age may act as next friend of a minor, provided his interest is not adverse to that of such minor and he is not a defendant in the suit.

Who may be next friend

446. If the interest of the next friend of a minor is adverse to that of such minor, or if he is so connected with a defendant whose interest is adverse to that of the minor, as to make it unlikely that the minor's interest

Removal of next friend.

<sup>1</sup> The following words which originally formed the concluding paragraph of this section were repealed by the Guardian and Wards Act, 1890 (VIII of 1890) "A guardian for the suit is not a guardian of person or property within the meaning of the Indian Majority Act, 1875, s 3"

<sup>2</sup> These words were added by the Guardian and Wards Act, 1890 (VIII of 1890), s 53, cl B, printed, General Acts, Vol V, Ed 1898, p 384

(Part III.—Of Suits in Particular Cases Chapter XXXI—Suits by  
and against Minors and Persons of unsound mind Secs 447-452)

will be properly protected by him, or if he does not do his duty, or, pending the suit, ceases to reside within British India, or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for his removal; and the Court (if satisfied of the sufficiency of the cause assigned) may order the next friend to be removed accordingly.

<sup>1</sup>[If the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared, who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor]

Retirement  
of next  
friend.

447. Unless otherwise ordered by the Court, a next friend shall not retire at his own request without first procuring a fit person to be put in his place, and giving security for the costs already incurred.

Application  
for appoint-  
ment of new  
next friend.

The application for the appointment of a new next friend shall be supported by affidavit showing the fitness of the person proposed, and also that he has no interest adverse to the minor.

Stay of  
proceedings  
on death or  
removal of  
next friend.

448. On the death or removal of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place.

Application  
for appoint-  
ment of new  
next friend.

449. If the pleader of such minor omits, within reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or the matter at issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit

Course to be  
followed  
by minor  
plaintiff or  
applicant  
on coming  
of age.

450. A minor plaintiff, or a minor not a party to a suit on whose behalf an application is pending, on coming of age must elect whether he will proceed with the suit or application.

Where he  
elects to pro-  
ceed.

451. If he elects to proceed with it, he shall apply for an order discharging the next friend, and for leave to proceed in his own name.

The title of the suit or application shall in such case be corrected so as to read thenceforth thus:—

“A. B, late a minor, by C. D., his next friend, but now of full age.”

Where he  
elects to  
abandon.

452. If he elects to abandon the suit or application, he shall, if a sole plaintiff or sole applicant apply for an order to dismiss the suit or appli-

<sup>1</sup> This paragraph was added by the Guardian and Wards Act, 1890 (VIII of 1890), s 53, cl (c), printed, General Acts, Vol. V, Ed 1893, p. 384.

(Part III.—Of Suits in Particular Cases Chapter XXXI—Suits by and against Minors and Persons of unsound mind. Secs. 453-457.)

cation on repayment of the costs incurred by the defendant or respondent, or which may have been paid by his next friend

453. Any application under section 451 or section 452 may be made *ex parte*; and it must be proved by affidavit that the late minor has attained his full age.

Making and proving applications under sections 451, 452

454. A minor co-plaintiff on coming of age and desiring to repudiate the suit must apply to have his name struck out as co-plaintiff; and the Court, if it finds that he is not a necessary party, shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit.

When minor co-plaintiff coming of age desires to repudiate suit

Notice of the application shall be served on the next friend, as well as on the defendant; and it must be proved by affidavit that the late minor has attained his full age. The costs of all parties of such application, and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs.

Costs

If the late minor be a necessary party to the suit, the Court may direct him to be made a defendant.

455. If any minor on attaining majority can prove to the satisfaction of the Court that a suit instituted in his name by a next friend was unreasonable or improper, he may, if a sole plaintiff, apply to have the suit dismissed.

When suit unreasonable or improper.

Notice of the application shall be served on all the parties concerned; and the Court, upon being satisfied of such unreasonableness or impropriety, may grant the application, and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit.

Costs.

456. An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff. Such application must be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in question in the suit adverse to that of the minor, and that he is a fit person to be so appointed.

Petition for appointment of guardian *ad litem*.

Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian:

Provided that he has no interest adverse to that of the minor.

457. A co-defendant of sound mind and of full age may be appointed guardian for the suit, if he has no interest adverse to that of the minor, but neither a plaintiff, nor a married woman, can be so appointed.

Who may be guardian *ad litem*.

(Part III—Of Suits in Particular Cases Chapter XXXI—Suits by and against Minors and Persons of unsound mind Secs 458-463)

Guardian neglecting his duty may be removed  
Costs

458. If the guardian for the suit of a minor defendant does not do his duty, or if other sufficient ground be made to appear, the Court may remove him, and may order him to pay such costs as may have been occasioned to any party by his breach of duty.

Appointment in place of guardian dying *pendente lite*.

459. If the guardian for the suit dies pending such suit, or is removed by the Court, the Court shall appoint a new guardian in his place.

Guardian *ad litem* of minor representative of deceased judgment-debtor.  
Receipt by next friend or guardian *ad litem* of property under decree for minor.

460. When the enforcement of a decree is applied for against the heir or representative, being a minor, of a deceased party, a guardian for the suit of such minor shall be appointed by the Court, and the decree-holder shall serve on such guardian notice of such application.

461.<sup>1</sup> (1) A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other moveable property on behalf of a minor, either—

(a) by way of compromise before decree or order, or

(b) under a decree or order in favour of the minor.

(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the Court to receive the money or other moveable property, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application.

Next friend or guardian *ad litem* not to compromise without leave of Court

462. No next friend or guardian for the suit shall, without the leave of the Court, enter into any agreement or compromise on behalf of a minor, with reference to the suit in which he acts as next friend or guardian.

Compromise without leave voidable.

Any such agreement or compromise entered into without the leave of the Court shall be voidable against all parties other than the minor.

Application of sections 440 to 462 to persons of unsound mind.

463. The provisions contained in sections 440 to 462 (both inclusive) shall, *mutatis mutandis*, apply in the case of persons of unsound mind, adjudged to be so under Act No. XXXV of 1858,<sup>2</sup> or under any other law for the time being in force.

<sup>1</sup> S. 461 was substituted for the original section by s. 53 (D) of the Guardian and Wards Act, 1890 (VIII of 1890), printed, General Acts, Vol. V, Ed. 1898, p. 384.

<sup>2</sup> Printed, General Acts, Vol. I, Ed. 1898, p. 151.

(Part III—Of Suits in Particular Cases Chapter XXXI—Suits by and against Minors and Persons of unsound mind Sec 464. Chapter XXXII.—Suits by and against Military Men Secs 465-466 )

464.<sup>1</sup> Nothing in this Chapter applies to a Sovereign Prince or ruling Chief suing or being sued in the name of his State or being sued, by direction of the Governor General in Council or a Local Government, in the name of an agent or in any other name, or shall be construed to effect or in any way derogate from the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind.

Princes and  
Chiefs and  
wards of  
Court

## CHAPTER XXXII<sup>2</sup>

### SUITS BY AND AGAINST MILITARY MEN.

465. When any officer or soldier actually serving the Government in a military capacity is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorize any person to sue or defend in his stead.

Officers or  
soldiers who  
cannot  
obtain leave  
may author-  
ize any  
person to  
sue or defend  
for them.

The authority shall be in writing and shall be signed by the officer or soldier in the presence of (a) his commanding officer, or the next subordinate officer, if the party be himself the commanding officer, or (b) where the officer or soldier is serving in military staff employment, the head or other superior officer of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in Court.

When so filed the countersignature shall be sufficient proof that the authority was duly executed, and that the officer or soldier by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

*Explanation*—In this Chapter the expression “commanding officer” means the officer in actual command for the time being of any regiment, corps, detachment or depôt to which the officer or soldier belongs.

466. Any person authorized by an officer or a soldier to prosecute or defend a suit in his stead may prosecute or defend it in person in the same

Person so  
authorized  
may act  
personally

<sup>1</sup> This section was substituted for the original s 464 as amended by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 41, by the Guardian and Wards Act, 1890 (VIII of 1890), s 53, cl (e), printed, General Acts, Vol V, Ed 1898, p 384

<sup>2</sup> This Chapter (XXXII) extends to Provincial Small Cause Courts, see s 5 and the second schedule

(Part III.—Of Suits in Particular Cases Chapter XXXII.—Suits by and against Military Men Secs 467-468 Chapter XXXIII.—Interpleader Sec 470.)

or appoint  
pleader.

Service on  
person so  
authorized,  
or on his  
pleader,  
to be good  
service

Service on  
officers and  
soldiers.

manner as the officer or soldier could do if present; or he may appoint a pleader to prosecute or defend the suit on behalf of such officer or soldier.

467. Processes served upon any person authorized by an officer or a soldier, as in section 465, or upon any pleader appointed as aforesaid by such person to act for, or on behalf of, such officer or soldier, shall be as effectual as if they had been served on the party in person or on his pleader.

468. When \* \*<sup>1</sup> a soldier is a defendant, the Court shall send a copy of the summons to his commanding officer for the purpose of being served on him.

The officer to whom such copy is sent, after causing it to be served on the person to whom it is addressed, if practicable, shall return it to the Court with the written acknowledgment of such person endorsed thereon

If from any cause the copy cannot be so served, it shall be returned to the Court by which it was sent, with information of the cause which has prevented the service.

469. [*Execution of warrant of arrest in cantonments, etc.*] Rep. by the Cantonments Act, 1889 (XIII of 1889), section 2 (1).

## CHAPTER XXXIII.<sup>2</sup>

### INTERPLEADER.

When inter-  
pleader-suit  
may be insti-  
tuted.

470. When two or more persons claim adversely to one another the same payment or property from another person, whose only interest therein is that of a mere stakeholder and who is ready to render it to the right owner, such stakeholder may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to whom the payment or property should be made or delivered, and of obtaining indemnity for himself:

Provided that if any suit is pending in which the rights of all parties can properly be decided, the stakeholder shall not institute a suit of interpleader.

<sup>1</sup> The words "an officer or" were repealed by the Cantonments Act, 1889 (XIII of 1889), s 468, printed, General Acts, Vol V, Ed 1898, p 335

<sup>2</sup> This Chapter (XXXIII) extends to Provincial Small Cause Courts, see s 5 and the second schedule.

471. In every suit of interpleader the plaintiff must, in addition to the other statements necessary for plaints,<sup>1</sup> state— Plaint in such suit.

- (a) that the plaintiff has no interest in the thing claimed otherwise than as a mere stakeholder;
- (b) the claims made by the defendants severally; and
- (c) that there is no collusion between the plaintiff and any of the defendants.

472. When the thing claimed is capable of being paid into Court or placed in the custody of the Court, the plaintiff must so pay or place it before he can be entitled to any order in the suit. Payment of thing claimed into Court.

473. At the first hearing the Court may—

- (a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit. Procedure at first hearing.

or, if it thinks that justice or convenience so require,

- (b) retain all parties until the final disposal of the suit; and, if it finds that the admissions of the parties or other evidence enable it,

- (c) adjudicate the title to the thing claimed: or else it may
- (d) direct the defendants to interplead one another by filing statements and entering into evidence for the purpose of bringing their respective claims before the Court, and shall adjudicate on such claims.

474. Nothing in this Chapter shall be taken to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords. When agents and tenants may institute interpleader-suits.

#### *Illustrations*

(a) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A, and claims them from B. B cannot institute an interpleader-suit against A and C.

(b) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may institute an interpleader-suit against A and C.

<sup>1</sup> See s 50, *supra*. For form of plaint in such suits, see Sch IV, No 104, *infra*

(Part III.—Of Suits in Particular Cases. Chapter XXXIII.—Interpleader. Secs. 475-476. Part IV—Provisional Remedies. Chapter XXXIV.—Of Arrest and Attachment before Judgment, Sec. 477.)

Charge of  
plaintiff's  
costs.

475. When the suit is properly instituted the Court may provide for the plaintiff's costs by giving him a charge on the thing claimed or in some other effectual way.

Procedure  
where defend-  
ant is suing  
stakeholder.

476. If any of the defendants in an interpleader-suit is actually suing the stakeholder in respect of the subject of such suit, the Court in which the suit against the stakeholder is pending shall, on being duly informed by the Court which passed the decree in the interpleader-suit in favour of the stakeholder that such decree has been passed, stay the proceedings as against him; and his costs in the suit so stayed may be provided for in such suit, but if, and so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader-suit.

Costs.

## PART IV.

### PROVISIONAL REMEDIES.

#### CHAPTER XXXIV.<sup>1</sup>

##### OF ARREST AND ATTACHMENT BEFORE JUDGMENT.

###### A.—Arrest before Judgment

When plain-  
tiff may  
apply that  
security be  
taken.

477. If at any stage of any suit, other than a suit for the possession of immoveable property, the plaintiff satisfies the Court by affidavit or otherwise,

that the defendant, with intent to avoid or delay the plaintiff, or to avoid any process of the Court, or to obstruct or delay the execution of any decree that may be passed against him,—

- (a) has absconded or left the jurisdiction of the Court, or
- (b) is about to abscond or to leave the jurisdiction of the Court, or
- (c) has disposed of or removed from the jurisdiction of the Court his property or any part thereof, or

that the defendant is about to leave British India under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

<sup>1</sup> This Chapter (XXXIV), except as regards immoveable property, extends to Provincial Small Cause Courts, see s 5 and the second schedule.

*(Part IV.—Provisional Remedies. Chapter XXXIV.—Of Arrest and Attachment before Judgment. Secs. 478-481.)*

the plaintiff may apply to the Court that security be taken for the appearance of the defendant to answer any decree that may be passed against him in the suit.

478. If the Court, after examining the applicant, and making such further investigation as it thinks fit is satisfied—

that the defendant, with any such intent as aforesaid,—

- (a) has absconded or left the jurisdiction of the Court, or
- (b) is about to abscond or to leave the jurisdiction of the Court, or
- (c) has disposed of or removed from the jurisdiction of the Court his property or any part thereof, or

that the defendant is about to leave British India under the circumstances last aforesaid,

the Court may issue a warrant<sup>1</sup> to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance.

479. If the defendant fail to show such cause, the Court shall order him either to deposit in Court money or other property sufficient to answer the claim against him, or to give security for his appearance at any time when called upon while the suit is pending, and until execution or satisfaction of any decree that may be passed against him in the suit.

The surety shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit.

480. The surety for the appearance of the defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation.

On such application being made the Court shall summon the defendant to appear, or, if it thinks fit, may issue a warrant for his arrest in the first instance.

On the appearance of the defendant pursuant to the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.

481. If the defendant fail to comply with any order under section 479 or section 480, the Court may commit<sup>2</sup> him to jail until the decision of the suit, or, if judgment be given against the defendant, until the execution of the decree :

Order to bring up defendant to show cause why he should not give security.

If defendant fail to show cause, Court may order him to make deposit or give security.

Procedure in case of application by surety to be discharged.

Procedure where defendant fails to give security or find fresh security.

<sup>1</sup> For form of warrant, see Sch. IV, No 158, *infra*

<sup>2</sup> For form of order of committal, see Sch. IV, No 159, *infra*.

(Part IV.—Provisional Remedies Chapter XXXIV.—Of Arrest and Attachment before Judgment. Secs. 482-484.)

Provided that no person shall be imprisoned under this section in any case for a longer period than six months, nor for a longer period than six weeks when the amount or value of the subject-matter of the suit does not exceed fifty rupees :

Provided that no person shall be detained in prison under this section after he has complied with such order.

Subsistence  
of defend-  
ants arrested.

482. The provisions of section 339 as to allowances payable for the subsistence of judgment-debtors shall apply to all defendants arrested under this Chapter.

*B.—Attachment before Judgment.*

Application  
before judg-  
ment for  
security from  
defendant to  
satisfy decree,  
and in default  
for attach-  
ment of  
property.

483. If at any stage of any suit the plaintiff satisfies the Court by affidavit or otherwise that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,—

(a) is about to dispose of the whole or any part of his property, or to remove the same from the jurisdiction of the Court in which the suit is pending, or

(b) has quitted the jurisdiction of the Court, leaving therein property belonging to him,

the plaintiff may apply to the Court to call upon the defendant to furnish security to satisfy any decree that may be passed against him in such suit and, on his failing to give such security, to direct that any portion of his property within the jurisdiction of the Court shall be attached until the further order of the Court.

Contents of  
application.

The application shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

Court may  
call on  
defendant  
to furnish  
security or  
show cause.

484. If the Court, after examining the applicant and making any further investigation which it thinks fit, is satisfied that the defendant is about to dispose of or remove his property, with intent to obstruct or delay the execution of any decree that may be passed against him in the suit, or that he has with such intent quitted the jurisdiction of the Court, leaving therein property belonging to him, the Court may require<sup>1</sup> him, within a time to be fixed by the Court, either to furnish security in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the <sup>2</sup>[same],

<sup>1</sup> For form of order, see Sch IV, No 160, *infra*

<sup>2</sup> This word was substituted for the word "sum" by the Repealing and Amending Act, 1891 (XII of 1891), second schedule, printed, General Acts, Vol VI.

## (Part IV.—Provisional Remedies. Chapter XXXIV.—Of Arrest and Attachment before Judgment. Secs. 485-491.)

or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

The Court may also in the order direct the conditional attachment of the whole or any portion of the property specified in the application.

485. If the defendant fail to show cause why he should not furnish security, or fail to furnish the security required, within the time fixed by the Court, the Court may order<sup>1</sup> that the property specified in the application, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, shall be attached.

Attachment if cause not shown or security not furnished.

If the defendant show such cause or furnish the required security, and the property specified in the application or any portion of it has been attached, the Court shall order the attachment to be withdrawn.

Withdrawal of attachment.

486. The attachment shall be made in the manner herein provided<sup>2</sup> for the attachment of property in execution of a decree for money.

Mode of making attachment.

487. If any claim be preferred to the property attached before judgment, such claim shall be investigated in the manner hereinbefore provided for the investigation of claims to property attached in execution of a decree for money.

Investigation of claims to property attached before judgment.

488. When an order of attachment before judgment is passed, the Court which passed the order shall remove the attachment whenever the defendant furnishes the security required, together with security for the costs of the attachment, or when the suit is dismissed.

Removal of attachment when security furnished or suit dismissed.

489. Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.

Attachment not to affect rights of strangers, or bar decree-holder from applying for sale.

490. Where property is under attachment by virtue of the provisions of this Chapter, and a decree is given in favour of the plaintiff, it shall not be necessary to re-attach the property in execution of such decree.

Property attached under Chapter not to be re-attached in execution of decree

*C.—Compensation for Improper Arrests or Attachment.*

491. If in any suit in which an arrest or attachment has been affected, it appears to the Court that such arrest or attachment was applied for on insufficient grounds,

Compensation for obtaining arrest or attachment

<sup>1</sup> For form of order, see Sch IV, No 160, *infra*

<sup>2</sup> See Ch XIX, *supra* For forms of orders, see Sch IV, Nos 142, 162, 163, 164 and 165, *infra*.

(Part IV.—Provisional Remedies Chapter XXXV.—Of temporary Injunctions and Interlocutory Orders Secs 492-493.)

on insuffi-  
cient  
grounds.

or if the suit of the plaintiff fails, and it appears to the Court that there was no probable ground for instituting the suit,

the Court may, on the application of the defendant, award against the plaintiff in its decree such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him by the arrest or attachment;

Proviso.

Provided that the Court shall not award under this section a larger amount than it might decree in a suit for compensation.

An award under this section shall bar any suit for compensation in respect of such arrest or attachment

## CHAPTER XXXV.

### OF TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS.

#### A.—Temporary Injunctions.<sup>1</sup>

Cases in  
which tem-  
porary  
injunction  
may be  
granted.

492. If in any suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or is about, to remove or dispose of his property with intent to defraud his creditors,

the Court may by order<sup>2</sup> grant a temporary injunction to restrain such act, or give such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, or refuse such injunction or other order.

Injunction  
to restrain  
repetition or  
continuance  
of breach.

493. In any suit for restraining the defendant from committing a breach of contract or other injury, whether compensation be claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

<sup>1</sup> See the Specific Relief Act (I of 1877), printed, General Acts, Vol III, Ed 1898, p 1.

<sup>2</sup> For form of order, see Sch IV, No 166, *infra*.

(Part IV.—Provisional Remedies Chapter XXXV.—Of temporary Injunctions and Interlocutory Orders. Secs. 494-497.)

The Court may by order grant such injunction on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit, or refuse the same.

In case of disobedience an injunction granted under this section or section 492 may be enforced by the imprisonment of the defendant for a term not exceeding six months, or the attachment of his property, or both.

No attachment under this section shall remain in force for more than one year, at the end of which time, if the defendant has not obeyed the injunction, the property attached may be sold, and out of the proceeds the Court may award to the plaintiff such compensation as it thinks fit and may pay the balance, if any, to the defendant.

494. The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice<sup>1</sup> of the application for the same to be given to the opposite party.

Before granting injunction, Court to direct notice to opposite party.

495. An injunction directed to a Corporation or public company is binding not only on the Corporation or Company itself, but also on all members and officers of the Corporation or Company whose personal action it seeks to restrain.

Injunction to Corporation binding on its members and officers.

496. Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order.

Order for injunction may be discharged, varied or set aside.

497. If it appears to the Court that an injunction which it has granted was applied for on insufficient grounds, or

Compensation to defendant for issue of injunction on insufficient grounds.

if, after the issue of the injunction, the suit is dismissed or judgment is given against the plaintiff by default or otherwise, and it appears to the Court that there was no probable ground for instituting the suit,

the Court may, on the application of the defendant, award against the plaintiff in its decree such sum, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him by the issue of the injunction :

Provided that the Court shall not award under this section a larger amount than it might decree in a suit for compensation.

Proviso.

An award under this section shall bar any suit for compensation in respect of the issue of the injunction.

<sup>1</sup> For form of notice, see Sch IV, No. 167, *infra*.

(Part IV.—Provisional Remedies. Chapter XXXV.—Of temporary Injunctions and Interlocutory Orders. Secs. 498-501.)

*B.—Interlocutory Orders.*

Power to order interim sale of perishable articles.

498. The Court may, on the application of any party, to a suit, and on the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any moveable property, being the subject of such suit, which is subject to speedy and natural decay.

Power to make order for detention, etc., of subject-matter, and to authorise entry, taking of samples and experiments

499. The Court may, on the application of any party to a suit, and on such terms as it thinks fit,

- (a) make an order for the detention, preservation or inspection of any property being the subject of such suit ;
- (b) for all or any of the purposes aforesaid authorize any person to enter upon or into any land or building in the possession of any other party to such suit ; and
- (c) for all or any of the purposes aforesaid, authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

The provisions hereinbefore contained as to execution of process shall apply, *mutatis mutandis*, to persons authorized to enter under this section.

Application for such orders to be after notice.

500. An application by the plaintiff for an order under section 498 or section 499 may be made after notice in writing to the defendant at any time after service of the summons.

An application by the defendant for a like order may be made after notice in writing to the plaintiff, and at any time after the applicant has appeared.

When party may be put in immediate possession of land the subject of suit

501. When land paying revenue to Government, or a tenure liable to sale, is the subject of a suit, if the party, in possession of such land or tenure neglects to pay the Government revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may, upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court), be put in immediate possession of the land or tenure ;

and the Court in its decree may award against the defaulter the amount so paid, with interest thereupon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereupon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit.

(Part IV.—Provisional Remedies. Chapter XXXV—Of temporary Injunctions and Interlocutory Orders. Sec. 502 Chapter XXXVI.—Appointment of Receivers Sec. 503.)

502. When the subject-matter of a suit is money or some other thing capable of delivery, and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court

Deposit of money, etc., in Court.

## CHAPTER XXXVI<sup>1</sup>

### APPOINTMENT OF RECEIVERS

503. Whenever it appears to the Court to be necessary for the realisation, preservation or better custody or management of any property, moveable or immoveable, the subject of a suit or under attachment, the Court may by order<sup>2</sup>

Power of Court to appoint Receivers

(a) appoint a Receiver of such property, and, if need be,

(b) remove the person in whose possession or custody the property may be from the possession or custody thereof;

(c) commit the same to the custody or management of such Receiver; and

(d) grant to such Receiver such fee or commission on the rents and profits of the property by way of remuneration,<sup>3</sup> [as the Court thinks fit], and all such powers as to bringing and defending suits, and for the realisation, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of instruments in writing, as the owner himself has or such of those powers as the Court thinks fit.

Every Receiver so appointed shall—

(e) give such security<sup>4</sup> (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property;

Receiver's liabilities.

<sup>1</sup> This Chapter (XXXVI) extends to the Provincial Small Cause Courts, *see* s 5 and the second schedule

<sup>2</sup> For form of order of appointment, *see* Sch IV, No 168, *infra*

<sup>3</sup> These words in cl (d) of s 503 were inserted by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 42, printed, General Acts, Vol V, Ed 1898, p 232

<sup>4</sup> For form of bond, *see* Sch IV, No 169, *infra*

(Part IV.—Provisional Remedies. Chapter XXXVI.—Appointment of Receivers. Secs 504-505. Part V.—Of Special Proceedings. Chapter XXXVII.—Reference to Arbitration. Sec. 506.)

- (f) pass his accounts at such periods and in such form as the Court directs;
- (g) pay the balance due from him thereon as the Court directs; and
- (h) be responsible for any loss occasioned to the property by his wilful default or gross negligence

Nothing in this section authorizes the Court to remove from the possession or custody of property under attachment any person whom the parties to the suit, or some or one of them, have or has not a present right so to remove.

When Collector may be appointed Receiver.

504. Where the property is land paying revenue to Government, or land of which the revenue has been assigned or redeemed, and the Court considers that the interests of those concerned will be promoted by the management of the Collector, <sup>1</sup>[the Court may, with the consent of the Collector, appoint him] to be Receiver of such property.

Courts empowered under this Chapter.

505. The powers conferred by this Chapter shall be exercised only by High Courts and District Courts:

Provided that, whenever the Judge of a Court subordinate to a District Court considers it expedient that a Receiver should be appointed in any suit before him, he shall nominate such person as he considers fit for such appointment, and submit such person's name, with the grounds for the nomination, to the District Court, and the District Court shall authorize such Judge to appoint the person so nominated, or pass such other order as it thinks fit.

## PART V.

### OF SPECIAL PROCEEDINGS.

#### CHAPTER XXXVII.<sup>2</sup>

##### REFERENCE TO ARBITRATION.

Parties to suit may apply for

506. If all the parties to a suit desire that any matter in difference between them in the suit be referred to arbitration, they may, at any time

<sup>1</sup> These words in s 504 were substituted by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 43, for the words "the Court may appoint the Collector." See General Acts, Vol V, Ed 1898, p. 232.

<sup>2</sup> This Chapter (XXXVII) extends to Provincial Small Cause Courts, see s. 5 and the second schedule.

(Part V.—Of Special Proceedings. Chapter XXXVII.—Reference to Arbitration. Secs. 507-511.)

before judgment is pronounced, apply, in person or by their respective pleaders specially authorized in writing in this behalf, to the Court for an order of reference.

Every such application shall be in writing and shall state the particular matter sought to be referred.

507. The arbitrator shall be nominated by the parties in such manner as may be agreed upon between them. Nomination of arbitrator.

If the parties cannot agree with respect to such nomination, or if the person whom they nominate refuses to accept the arbitration, and the parties desire that the nomination shall be made by the Court, the Court shall nominate the arbitrator. When Court to nominate arbitrator.

508. The Court shall, by order,<sup>1</sup> refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the delivery of the award, and specify such time in the order. Order of reference.

When once a matter is referred to arbitration, the Court shall not deal with it in the same suit, except as hereinafter provided.

509. If the reference be to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators,— When reference is to two or more, order to provide for difference of opinion.

(a) by the appointment of an umpire, or

(b) by declaring that the decision shall be with the majority, if the major part of the arbitrators agree, or

(c) by empowering the arbitrators to appoint an umpire, or

(d) otherwise, as may be agreed between the parties; or, if they cannot agree, as the Court determines.

If an umpire is appointed, the Court shall fix such time as it thinks reasonable for the delivery of his award in case he is required to act.

510. If the arbitrator or, where there are more arbitrators than one, any of the arbitrators, or the umpire, dies or refuses or neglects or becomes incapable to act, or leaves British India under circumstances showing that he will probably not return at an early date, the Court may in its discretion either appoint a new arbitrator or umpire in the place of the person so dying or refusing or neglecting or becoming incapable to act, or leaving British India, or make an order superseding the arbitration, and in such case shall proceed with the suit. Death, incapacity, etc., of arbitrators or umpire

511. Where the arbitrators are empowered by the order of reference to appoint an umpire and fail to do so, any of the parties may serve the arbi- Appointment of umpire by Court

<sup>1</sup> For forms of orders, see Sch IV, Nos 170 and 171, *infra*.

(Part V.—Of Special Proceedings Chapter XXXVII.—Reference to Arbitration Secs 512-517.)

trators with a written notice to appoint an umpire; and if, within seven days after such notice has been served, or such further time as the Court may in each case allow, no umpire be appointed, the Court, upon the application of the party who has served such notice as aforesaid, may appoint an umpire.

Powers of arbitrator or umpire appointed under sections 509, 510, 511 Summoning witnesses

512. Every arbitrator or umpire appointed under section 509, section 510 or section 511 shall have the like powers as if his name had been inserted in the order of reference

Punishment for default, etc.

513. The Court shall issue the same processes to the parties and witnesses whom the arbitrators or umpire desire or desires to examine, as the Court may issue in suits tried before it.

Persons not attending in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties and punishments, by order of the Court on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the Court.

Extension of time for making award

514. If, from the want of the necessary evidence or information, or from any other cause, the arbitrators cannot complete the award within the period specified in the order, the Court may, if it thinks fit, either grant a further time, and from time to time enlarge the period for the delivery of the award, or make an order superseding the arbitration, and in such case shall proceed with the suit

Supersession of arbitration

When umpire may arbitrate in lieu of arbitrators

515. When an umpire has been appointed he may enter on the reference in the place of the arbitrators—

(a) if they have allowed the appointed time to expire without making an award, or

(b) when they have delivered to the Court or to the umpire a notice in writing stating that they cannot agree.

Award to be signed and filed

516. When an award in a suit has been made, the persons who made it shall sign it and cause<sup>1</sup> it to be filed in Court, together with any depositions and documents which have been taken and proved before them, and notice of the filing shall be given to the parties

Arbitrators or umpire

517. Upon any reference by an order of the Court the arbitrators or umpire may, with the consent of the Court, state the award as to the whole

<sup>1</sup> For limitation of applications under this section. *see* the Indian Limitation Act, 1877 (XV of 1877), Sch II, art 176, printed, General Acts, Vol III, Ed 1898, p 75

(Part V—Of Special Proceedings. Chapter XXXVII.—Reference to Arbitration. Secs. 518-522.)

or any part thereof in the form of a special case for the opinion of the Court; and the Court shall deliver its opinion thereon; and such opinion shall be added to and form part of the award

may state  
special case

518. The Court may, by order, modify or correct an award—

- (a) where it appears that a part of the award is upon a matter not referred to arbitration, provided such part can be separated from the other part and does not affect the decision on the matter referred, or

Court may,  
on applica-  
tion, modify  
or correct  
award in  
certain  
cases

- (b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision

519. The Court may also make such order as it thinks fit respecting the costs of the arbitration, if any question arise respecting such costs and the award contain no sufficient provision concerning them.

Order as  
to costs of  
arbitration

520. The Court may remit the award or any matter referred to arbitration to the re-consideration of the same arbitrators or umpire, upon such terms as it thinks fit,—

When award  
or matter  
referred to  
arbitration  
may be  
remitted.

- (a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration;
- (b) where the award is so indefinite as to be incapable of execution;
- (c) where an objection to the legality of the award is apparent upon the face of it.

521. An award remitted under section 520 becomes void on the refusal of the arbitrators or umpire to re-consider it. But no award shall be set aside<sup>1</sup> except on one of the following grounds (namely) :—

Grounds for  
setting aside  
award.

- (a) corruption or misconduct of the arbitrator or umpire
- (b) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire;
- (c) the award having been made after the issue of an order by the Court superseding the arbitration and restoring the suit;

and no award shall be valid unless made within the period allowed by the Court.

522. If the Court sees no cause to remit the award or any of the matters referred to arbitration for re-consideration in manner aforesaid, and

Judgment  
to be accord-  
ing to award.

<sup>1</sup> For limitation of such applications to set aside an award, see the Indian Limitation Act, 1877 (XV of 1877), Sch. II, art. 158, printed, General Acts, Vol. III, Ed. 1898, p. 75

if no application has been made to set aside the award, or if the Court has refused such application,

the Court shall, after the time for making such application has expired,<sup>1</sup> proceed to give judgment according to the award,

or, if the award has been submitted to it in the form of a special case, according to its own opinion on such case.

Decree to follow.

Upon the judgment so given a decree shall follow, and shall be enforced in manner provided in this Code for the execution of decrees.<sup>2</sup> No appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award.

Agreement to refer to arbitration may be filed in Court

**523.** When any persons agree in writing that any difference between them shall be referred to the arbitration of any person named in the agreement or to be appointed by any Court having jurisdiction in the matter to which the agreement relates, the parties thereto, or any of them, may apply<sup>3</sup> that the agreement be filed in Court.

Application to be numbered and registered

The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs, and the others or other of them as defendants or defendant, if the application have been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

Notice to show cause against filing.

On such application being made the Court shall direct notice thereof to be given to all the parties to the agreement other than the applicants, requiring such parties to show cause, within the time specified in the notice, why the agreement should not be filed.

If no sufficient cause be shown, the Court may cause the agreement to be filed, and shall make an order of reference thereon, and may also nominate the arbitrator, when he is not named therein and the parties cannot agree as to the nomination.

Provisions of Chapter applicable to proceed-

**524.** The foregoing provisions of this Chapter, so far as they are consistent with any agreement so filed, shall be applicable to all proceedings under an order of reference made by the Court under section 523, and to

<sup>1</sup> See footnote on preceding page

<sup>2</sup> See Ch XIX, *supra*

<sup>3</sup> For court-fee on such applications, see the Court-fees Act, 1870 (VII of 1870), Sch. II, art 18, printed, General Acts, Vol II, Ed 1898, p 124

(Part V—Of Special Proceedings. Chapter XXXVII.—Reference to Arbitration. Secs. 525-526. Chapter XXXVIII.—Of Proceedings on Agreement of Parties. Sec. 527)

the award of arbitration and to the enforcement of the decree founded thereupon.

525. When any matter has been referred to arbitration without the intervention of a Court of Justice, and an award has been made thereon, any person interested in the award may apply<sup>1</sup> to the Court of the lowest grade having jurisdiction over the matter to which the award relates that the award be filed in Court.

The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants.

The Court shall direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to show cause, within a time specified, why the award should not be filed.

526. If no ground such as is mentioned or referred to in section 520 or section 521 be shown against the award, the Court shall order it to be filed and such award shall then take effect as an award made under the provisions of this Chapter.

mgs under  
order of  
reference.

Filing award  
in matter  
referred to  
arbitration  
without  
intervention -  
of Court.

Application  
to be num-  
bered and  
registered.

Notice to  
parties to  
arbitration

Filing  
and en-  
forcement  
of such  
award.

## CHAPTER XXXVIII.<sup>2</sup>

### OF PROCEEDINGS ON AGREEMENT OF PARTIES.

527. Parties claiming to be interested in the decision of any question of fact or law may enter into an agreement<sup>3</sup> in writing stating such question in the form of a case for the opinion of the Court, and providing that, upon the finding of the Court with respect to such question,—

(a) a sum of money fixed by the parties or to be determined by the Court shall be paid by one of the parties to the other of them;

or

(b) some property, moveable or immoveable, specified in the agreement shall be delivered by one of the parties to the other of them; or

Power to  
state case  
for Court's  
opinion.

<sup>1</sup> For limitation of such applications, see the Indian Limitation Act, 1877 (XV of 1877), Sch II, art 176, printed, General Acts, Vol III, Ed 1898, p 75

<sup>2</sup> This Chapter extends to Provincial Small Cause Courts, see s 5 and the second schedule

<sup>3</sup> For court-fee, see the Court-fees Act, 1870 (VII of 1870), Sch. II, art 19, printed, General Acts, Vol II, Ed 1898, p 124

(c) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

Every case stated under this section shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the question raised thereby

When value of subject-matter must be stated

528. If the agreement is for the delivery of any property, or for the doing, or the refraining from doing, any particular act, the estimated value of the property to be delivered, or to which the Act specified has reference, shall be stated in the agreement.

Agreement to be filed and numbered as suit

529. The agreement, if framed in accordance with the rules hereinbefore contained, may be filed in the Court which would have jurisdiction to entertain a suit, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement.

The agreement, when so filed, shall be numbered and registered as a suit between one or more of the parties claiming to be interested, as plaintiff or plaintiffs, and the other or others of them as defendant or defendants; and notice shall be given to all the parties to the agreement, other than the party or parties by whom it was presented.

Parties to be subject to Court's jurisdiction.

530. When the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court and shall be bound by the statements contained therein.

Hearing and disposal of case

531. The case shall be set down for hearing as a suit instituted under Chapter V, the provisions of which shall apply to such suit so far as the same are applicable.

If the Court is satisfied, after an examination of the parties, or after taking such evidence as it thinks fit,—

(a) that the agreement was duly executed by them, and

(b) that they have a *bonâ fide* interest in the question stated therein, and

(c) that the same is fit to be decided,

it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so given a decree shall follow and shall be enforced in the manner provided in this Code for the execution of decrees.<sup>1</sup>

<sup>1</sup> See Ch. XIX, *supra*.

(Part V.—Of Special Proceedings. Chapter XXXIX.—Of Summary Procedure on Negotiable Instruments. Secs. 532-534.)

CHAPTER XXXIX<sup>1</sup>

## OF SUMMARY PROCEDURE ON NEGOTIABLE INSTRUMENTS.

532. In any Court to which this section applies, all suits upon bills of exchange, hundís or promissory notes may, in case the plaintiff desires to proceed under this Chapter, be instituted by presenting a plaint in the form prescribed by this Code<sup>2</sup>, but the summons shall be in the form contained in the fourth schedule hereto annexed, No. 172, or in such other form as the High Court may from time to time prescribe.

Institution of summary suits upon bills of exchange, etc.

In any case in which the plaint and summons are in such forms respectively, the defendant shall not appear or defend the suit unless he obtains leave from a Judge as hereinafter mentioned so to appear and defend;

and, in default of his obtaining such leave or of appearance and defence in pursuance thereof, the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons, together with interest at the rate specified (if any) to the date of the decree, and a sum for costs to be fixed by a rule of the High Court, unless the plaintiff claims more than such fixed sum, in which case the costs shall be ascertained in the ordinary way, and such decree may be enforced forthwith.

The defendant shall not be required to pay into Court the sum mentioned in the summons, or to give security therefor, unless the Court thinks his defence not to be *prima facie* sustainable, or feels reasonable doubt as to its good faith.

Payment into Court of sum mentioned in summons.

*Explanation*—This section is not confined to cases in which the bill, hundí or note sued upon, together with mere lapse of time, is sufficient to establish a *prima facie* right to recover.

533. The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon the defendant paying into Court the sum mentioned in the summons, or upon affidavits satisfactory to the Court, which disclose a defence of such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application, and on such terms as to security, framing and recording issues, or otherwise, as the Court thinks fit.

Defendant showing defence on merits to have leave to appear.

534. After decree the Court may, under special circumstances, set

Power to

<sup>1</sup> For limitation of suits under Ch XXXIX, see the Indian Limitation Act, 1877 (XV of 1877), Sch II, art 5; for limitation of applications for leave to appear and defend a suit, see *ibid*, art 150, printed, General Acts, Vol III, Ed 1898, p 75.

<sup>2</sup> See s 50, *supra*

set aside  
decree.

aside the decree, and if necessary stay or set aside execution, and may give leave to appear to the summons and to defend the suit, if it seem reasonable to the Court so to do, and on such terms as the Court thinks fit.

Power to  
order bill,  
etc., to be  
deposited  
with officer  
of Court

535. In any proceeding under this Chapter the Court may order the bill, hundí or note on which the suit is founded to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

Recovery of  
cost of noting  
non-accept-  
ance of dis-  
honoured  
bill or note

536. The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this Chapter for the recovery of the amount of such bill or note.

Procedure  
in suits under  
Chapter.

537. Except as provided by sections 532 to 536 (both inclusive), the procedure in suits under this Chapter shall be the same as the procedure in suits instituted under Chapter V.

Application  
of Chapter.

538. Sections 532 to 537 (both inclusive) apply only to—

- (a) the High Courts of Judicature at Fort William, Madras and Bombay;
- (b) the Court of the Recorder of Rangoon;
- (c) the Courts of Small Causes in Calcutta, Madras and Bombay;
- (d) the Court of the Judge of Karáchi; and
- (e) any other Court having ordinary original civil jurisdiction to which the Local Government may, by notification in the official Gazette, apply them.<sup>1</sup>

In case of such application the Local Government may direct by whom any of the powers and duties incident to the provisions so applied shall be exercised and performed, and make any rules which it thinks requisite for carrying into operation the provisions so applied.

Within one month after such notification has been published such provisions shall apply accordingly, and the rules so made shall have the force of law.

<sup>1</sup> The sections have been applied to the following other Courts in—

(1) Burma—

(a) Court of the Judge of Maulmain; and

(b) Court of the Deputy Commissioner of Akyab;

see Burma Rules Manual, Ed. 1897, p. 116;

(2) the Madras Presidency—

(a) District and Subordinate Judges' Courts;

(b) District Munsifs' Courts;

see Madras List of Local Rules and Orders, Ed. 1898, Vol. I, p. 196.

The Local Government may, from time to time, alter or cancel any such notification.

## CHAPTER XL.

### OF SUITS RELATING TO PUBLIC CHARITIES.

**539.** In the case of any alleged breach of any express or constructive trusts created for public charitable or religious purposes, or whenever the direction of the Court is deemed necessary for the administration of any such trust, the Advocate General acting *ex officio*, or two or more persons <sup>1</sup> [having an interest] in the trust and having obtained the consent in writing of the Advocate General, may institute a suit in the High Court or the District Court within the local limits of whose civil jurisdiction the whole or any part of the subject-matter of the trust is situate, to obtain a decree—

When suits relating to public charities may be brought.

- (a) appointing new trustees under the trust;
- (b) vesting any property in the trustees under the trust;
- (c) declaring the proportions in which its objects are entitled;
- (d) authorizing the whole or any part of its property to be let, sold, mortgaged or exchanged;
- (e) settling a scheme for its management;

or granting such further or other relief as the nature of the case may require.

<sup>2</sup> The powers conferred by this section on the Advocate General may, outside the presidency-towns, be, with the previous sanction of the Local Government, exercised also by the Collector or by such officer as the Local Government may appoint in this behalf.

\* \* \* \* \*

<sup>1</sup> These words in s 539 were substituted for the words "having a direct interest," by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 44, printed, General Acts, Vol V, Ed 1898, p 232.

<sup>2</sup> The powers conferred by this section on the Advocate General are exercised—

- (a) in Lower Burma by the Government Advocate, *see* Burma Gazette, 1893, Pt. I, p 99;
- (b) in Maulmain in respect of the trust for the maintenance of certain pagodas, by the Deputy Commissioner, *see* Burma Gazette, 1889, Pt I, p 221,
- (c) in Mandalay by the Deputy Commissioner, *see* Burma Gazette, 1890, Pt I, p 455;
- (d) in the Central Provinces by the Secretary to the Chief Commissioner, *see* Central Provinces List of Local Rules and Orders, Ed 1896, p. 157;
- (e) in the Madras Presidency by all Collectors, except the Collector of Madras, *see* Madras List of Local Rules and Orders, Ed 1898, Vol I, p 197;
- (f) in the North-Western Provinces and Oudh by the Legal Remembrancer, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed 1894, p 114

<sup>3</sup> The last paragraph of s 539 was repealed by the Repealing and Amending Act, 1891 (XII of 1891), Sch II, printed, General Acts, Vol VI

(Part VI.—Of Appeals. Chapter XLI—Of Appeals from original Decrees. Secs. 540-543.)

## PART VI. OF APPEALS.

### CHAPTER XLI<sup>1</sup>

#### OF APPEALS FROM ORIGINAL DECREES.

Appeal to lie from all original decrees, except when expressly prohibited.

540. Unless when otherwise expressly provided by this Code or by any other law for the time being in force, an appeal shall lie from the decrees, or from any part of the decrees, of the Courts exercising original jurisdiction to the Courts authorized to hear appeals from the decisions of those Courts.

<sup>2</sup>[an appeal may lie under this section from an original decree passed *ex parte*]

Form of appeal  
What to accompany memorandum

541. The appeal shall be made in the form of a memorandum<sup>3</sup> in writing presented by the appellant, and shall be accompanied by a copy of the decree appealed against and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded.

Contents of memorandum.

Such memorandum shall set forth,<sup>4</sup> concisely and under distinct heads, the grounds of objection to the decree appealed against, without any argument or narrative, and such grounds shall be numbered consecutively.

Appellant confined to grounds set out.

542. The appellant shall not, without the leave of the Court, urge or be heard in support of any other ground of objection, but the Court in deciding the appeal shall not be confined to the grounds set forth by the appellant:

Provided that the Court shall not rest its decision on any ground not set forth by the appellant, unless the respondent has had sufficient opportunity of contesting the case on that ground.

Rejection or amendment of memorandum.

543. If the memorandum of appeal be not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there.

<sup>1</sup> For limitation of appeals, see the Indian Limitation Act, 1877 (XV of 1877), Sch II, arts 151, 152, 153 and 156, printed, General Acts, Vol III, Ed 1898, p 75

For restrictions on appeals in suits for recovery of rent in Bengal, see the Bengal Tenancy Act, 1885 (VIII of 1885), s 153 and schedule, printed, Bengal Code, Ed 1889, p 503.

<sup>2</sup> This paragraph was added by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 45, printed, General Acts, Vol V, Ed 1898, p 232

<sup>3</sup> For form, see Sch IV, No 173, *infra*

<sup>4</sup> See also s 591, *infra*

(Part VI—Of Appeals Chapter XLI.—Of Appeals from original Decrees. Secs. 544-546.)

When the Court rejects under this section any memorandum it shall record the reasons for such rejection.

When a memorandum of appeal is amended under this section the Judge, or such officer as he appoints in this behalf, shall attest the amendment by his signature.

544. Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed against proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal against the whole decree, and thereupon the Appellate Court may reverse or modify the decree in favour of all the plaintiffs or defendants, as the case may be.

One of several plaintiffs or defendants may obtain reversal of whole decree if it proceed on ground common to all

*Of staying and executing Decrees under Appeal.*

545. Execution of a decree shall not be stayed by reason only of an appeal having been preferred against the decree; but the Appellate Court may for sufficient cause order the execution to be stayed.

Execution of decree not stayed solely by reason of appeal

If an application be made for stay of execution of an appealable decree before the expiry of the time allowed for appealing therefrom, the Court which passed the decree may for sufficient cause order the execution to be stayed:

Stay of execution of appealable decree before time for appealing has expired

Provided that no order shall be made under this section unless the Court making it is satisfied—

- (a) that substantial loss may result to the party applying for stay of execution unless the order is made;
- (b) that the application has been made without unreasonable delay; and
- (c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

546. If an order is made for the execution of a decree against which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be given for the restitution of any property which may be taken in execution of the decree, or for the payment of the value of such property and for the due performance of the decree or order of the Appellate Court,

Security in case of order for execution of decree appealed against.

or the Appellate Court may for like cause direct the Court which passed the decree to take such security

(Part VI.—Of Appeals. Chapter XLI.—Of Appeals from original Decrees. Secs. 547-550)

And when an order has been passed for the sale of immoveable property in execution of a decree for money, and an appeal is pending against such decree, the sale shall on the application of the judgment-debtor be stayed until the appeal is disposed of, on such terms as to giving security or otherwise as the Court which passed the decree thinks fit.

No such security to be required from Government or public officers.

547. No such security as is mentioned in sections 545 and 546 shall be required from the Secretary of State for India in Council, or (when Government has undertaken the defence of the suit) from any public officer sued in respect of an act alleged to be done by him in his official capacity.

#### *Of Procedure in Appeal from Decrees*

Registry of memorandum of appeal.

548. When a memorandum of appeal is admitted, the Appellate Court or the proper officer of that Court shall endorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose.

Register of appeals.

Such book shall be called the Register of Appeals.<sup>1</sup>

Appellate Court may require appellant to give security for costs  
When appellant resides out of British India.

549. The Appellate Court may at its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both :

Provided that the Court shall demand such security in all cases in which the appellant is residing out of British India, and is not possessed of any sufficient immoveable property within British India independent of the property (if any) to which the appeal relates.

If such security be not furnished within such time as the Court orders, the Court shall reject the appeal.

<sup>2</sup>[If such security be furnished, any costs for which a surety may have rendered himself liable may be recovered from him in execution of the decree of the Appellate Court in the same manner as if he were the appellant]

Appellate Court to give notice to Court whose decree appealed against.

550. When the memorandum of appeal is registered, the Appellate Court shall send notice of the appeal to the Court against whose decree the appeal is made.

<sup>1</sup> For form, see Sch IV, No 174, *infra*, for power of chartered High Courts to alter that form, see s 644, *infra*

<sup>2</sup> The last paragraph of s 549 was added by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 46, printed, General Acts, Vol V, Ed. 1898, p 232

(Part VI.—Of Appeals. Chapter XLI—Of Appeals from original Decrees. Secs. 551-553)

If the appeal be from a Court the records of which are not deposited in the Appellate Court, the Court receiving such notice shall send with all practicable despatch all material papers in the suit, or such papers as may be specially called for by the Appellate Court.

Transmission  
of papers to  
Appellate  
Court

Either party may apply in writing to the Court against whose decree the appeal is made, specifying any of such papers in such Court of which he requires copies to be made; and copies of such papers shall be made at the expense of the applicant, and shall be deposited accordingly.

Copies of  
exhibits  
in Court  
whose decree  
appealed  
against

551.<sup>1</sup> (1) The Appellate Court, if it thinks fit, may, after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day, dismiss the appeal without sending notice of the appeal to the Court against whose decree the appeal is made and without serving notice on the respondent or his pleader.

Power to  
dismiss  
appeal  
without  
sending  
notice to  
Lower  
Court.

(2) If on the day fixed under sub-section (1) or any other day to which the hearing may be adjourned the appellant does not attend in person or by his pleader, the appeal shall be dismissed for default.

(3) The dismissal of an appeal under this section shall be notified to the Court against whose decree the appeal is made

552.<sup>2</sup> Unless the Appellate Court dismisses the appeal under the last foregoing section, it shall fix a day for hearing the appeal.

Day for  
hearing  
appeal

Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent, and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

553. Notice<sup>3</sup> of the day so fixed shall be stuck up in the appellate court-house, and a like notice shall be sent by the Appellate Court to the Court against whose decree the appeal is made, and shall be served on the respondent or on his pleader in the Appellate Court in the manner provided in Chapter VI for the service on a defendant of a summons to appear and answer; and all rules applicable to such summons, and to proceedings with reference to the service thereof, shall apply to the service of such notice.

Publication  
and service  
of notice  
of day for  
hearing  
appeal.

Instead of sending the notice to the Court against whose decree the

Appellate  
Court may

<sup>1</sup> S. 551 was substituted for the original section by the Debtors Act, 1888 (VI of 1888), s. 47 (1), printed, General Acts, Vol V, Ed 1898, p 229

<sup>2</sup> The first paragraph of s 552 was substituted for the original paragraph by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 47 (2), printed, General Acts, Vol V, Ed 1898 The original paragraph was as follows —“The Appellate Court, unless where it confirms, under section 551, the decision of the Lower Court, shall fix a day for hearing the appeal”

<sup>3</sup> For form of notice, see Sch IV, No 175, *infra*.

(Part VI.—Of Appeals. Chapter XLI—Of Appeals from original Decrees. Secs. 554-559)

itself cause  
notice to be  
served.

Contents  
of notice

appeal is made, the Appellate Court may itself cause the notice to be served on the respondent or his pleader under the rules above referred to.

554. The notice to the respondent shall declare that, if he does not appear in the Appellate Court on the day so fixed, the appeal will be heard *ex parte*.

#### Procedure on Hearing.

Right to  
begin.

555. On the day so fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal. The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

Dismissal  
of appeal  
for appel-  
lant's  
default

Hearing  
of appeal  
*ex parte*.

Dismissal  
of appeal  
where notice  
not served  
in conse-  
quence of  
appellant's  
failure to  
deposit  
cost.

Proviso

556.<sup>1</sup> If on the day so fixed, or any other day to which the hearing may be adjourned, the appellant does not attend in person or by his pleader, the appeal shall be dismissed for default.

If the appellant attends and the respondent does not attend, the appeal shall be heard *ex parte* in his absence.

557. If on the day so fixed, or any other day to which the hearing may be adjourned, it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the period fixed by the Court, the sum required to defray the cost of issuing the notice, the Court may order that the appeal be dismissed:

Provided that no such order shall be passed, although the notice has not been served upon the respondent, if on the day fixed for hearing the appeal the respondent appears in person or by a pleader, or by a duly authorized agent.

Re-admission  
of appeal  
dismissed  
for default

558. If an appeal be dismissed under <sup>2</sup>[section 551, sub-section (2),] section 556 or section 557, the appellant may apply to the Appellate Court for the re-admission of the appeal; and, if it be proved that he was prevented by any sufficient cause from attending when the appeal was called on for hearing or from depositing the sum so required, the Court may re-admit the appeal on such terms as to costs or otherwise as the Court thinks fit to impose upon him.

Power to  
adjourn  
hearing,  
and direct  
persons

559. If it appear to the Court at the hearing that any person who was a party to the suit in the Court against whose decree the appeal is made, but

<sup>1</sup> An order made under this section (556) is not a "decree" within the meaning of the definition in s 2 (*supra*), I L R 23 Cal 115

<sup>2</sup> This part of s 558 was added by Civil Procedure Code Amendment Act, 1888 (VII of 1888), s. 47 (3), printed, General Acts, Vol V, Ed 1898, p 232.

(Part VI.—Of Appeals. Chapter XLI—Of Appeals from original Decrees Secs 560-562)

who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court, and direct that such person be made a respondent.

appearing interested to be made respondents.

560. When an appeal is heard *ex parte* in the absence of the respondent, and judgment is given against him, he may apply to the Appellate Court to re-hear the appeal; and, if he satisfies the Court that the notice was not duly served or that he was prevented by sufficient cause from attending when the appeal was called on for hearing, the Court may re-hear the appeal on such terms as to costs or otherwise as the Court thinks fit to impose upon him.

Re-hearing on application of respondent against whom *ex parte* decree made.

561. Any respondent, though he may not have appealed against any part of the decree, may upon the hearing not only support the decree on any of the grounds decided against him in the Court below, but take any objection<sup>1</sup> to the decree which he could have taken by way of appeal, <sup>2</sup>[provided he has filed the objection in the Appellate Court within one month from the date of the service on him or his pleader under section 553 of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow]

Upon hearing, respondent may object to decree as if he had preferred separate appeal

Such objection shall be in the form of a memorandum, and the provisions of section 541, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

Form of notice, and provisions applicable thereto

<sup>3</sup>[Unless the respondent files with the objection a written acknowledgment from the appellant or his pleader of having received a copy thereof, the Appellate Court shall cause such a copy to be served, as soon as may be after the filing of the objection, on the appellant or his pleader, at the expense of the respondent.

The provisions of Chapter XLIV shall, so far as they can be made applicable, apply to an objection under this section.]

562. If the Court against whose decree the appeal is made has disposed of the suit upon a preliminary point \* \* \* \* \*,<sup>4</sup> and the decree upon such preliminary point is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, together with a copy of the order in appeal, to the Court against whose decree the appeal is

Remand of case by Appellate Court.

<sup>1</sup> As to payment of additional court-fee in such a case, see the Court-fees Act, 1870 (VII of 1870), s 16, printed, General Acts, Vol II, Ed 1898, p 131.

<sup>2</sup>, <sup>3</sup> These words in s 561 and the last two paragraphs were respectively substituted and added by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 48, printed, General Acts, Vol V, Ed 1898, p 232

<sup>4</sup> The words "so as to exclude any evidence of fact which appears to the Appellate Court essential to the determination of rights of the parties" in s 562, were repealed by Act VII of 1888, s 49 (1), printed, General Acts, Vol V, Ed. 1898, p 232

(Part VI—Of Appeals. Chapter XLI—Of Appeals from original Decrees. Secs. 564-568.)

made, with directions to re-admit the suit under its original number in the register<sup>1</sup> and proceed to<sup>2</sup>[determine] the suit on the merits.

The Appellate Court may, if it thinks fit, direct what issue or issues shall be tried in any case so remanded.

563. [*When further evidence barred. Limit to remand*] Rep. by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), section 50.

564. The Appellate Court shall not remand a case for a second decision, except as provided in section 562.

When evidence on record sufficient, Appellate Court may determine case finally

565. When the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court<sup>3</sup> [may,] after re-settling the issues, if necessary, finally determine the case, notwithstanding that the judgment of the Court against whose decree the appeal is made has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

When Appellate Court may frame issues and refer them for trial to Court whose decree appealed against.

566. If the Court against whose decree the appeal is made has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, \* \* \* \* \*<sup>4</sup> the Appellate Court may, <sup>5</sup>[if necessary] frame issues for trial, and may refer the same for trial to the Court against whose decree the appeal is made, and in such case shall direct such Court to take the additional evidence required;

and such Court shall proceed to try such issues, and shall return to the Appellate Court its finding thereon together with the evidence.

Finding and evidence to be put on record. Objections to finding. Determination of appeal. Production of additional evidence in Appellate Court.

567. Such finding and evidence shall become part of the record in the suit; and either party may, within a time to be fixed by the Appellate Court, present a memorandum of objections to the finding.

After the expiration of the period fixed for presenting such memorandum the Appellate Court shall proceed to determine the appeal.

568. The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the Court against whose decree the appeal is made refuses to admit evidence which ought to have been admitted, or

<sup>1</sup> See s 58 (last clause), *supra*

<sup>2</sup> This word "determine" in s 562 was substituted for the word "investigate" by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 49 (2), printed, General Acts, Vol V, Ed 1898, p 232

<sup>3</sup> The word "may" was substituted for the word "shall" by Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 51

<sup>4</sup> The words "and the evidence upon the record is not sufficient to enable the Appellate Court to determine such issue or question" were repealed by Act VII of 1888, s 52 (1).

<sup>5</sup> These words were inserted by Act VII of 1888, s 52 (2)

(Part VI.—Of Appeals. Chapter XLI.—Of Appeals from original Decrees. Secs. 569-574.)

(b) the Appellate Court requires any document to be produced <sup>1</sup> [or] any witness to be examined to enable it to pronounce judgment; or for any other substantial cause,

the Appellate Court may allow such evidence to be produced, or document to be received, or witness to be examined

Whenever additional evidence is admitted by an Appellate Court, the Court shall record on its proceedings the reason for such admission.

**569.** Whenever additional evidence is allowed to be received, the Appellate Court may either take such evidence, or direct the Court against whose decree the appeal is made, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court.

Mode of taking additional evidence.

**570.** In all cases where additional evidence is directed or allowed to be taken, the Appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified.

Points to be defined and recorded

#### *Of the Judgment in Appeal.*

**571.** The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the Court against whose decree the appeal is made, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day, of which notice shall be given to the parties or their pleaders.

Judgment when and where pronounced.

**572.** The judgment shall be written in English; provided that if English is not the mother-tongue of the Judge, and he is not able to write an intelligible judgment in English, the judgment shall be written in his mother-tongue or in the language of the Court.

Language of judgment

**573.** When the language in which the judgment is written is not the language of the Court, the judgment shall, if any party so require, be translated into such language, and the translation, after it has been ascertained to be correct, shall be signed by the Judge or such officer as he appoints in this behalf.

Translation of judgment.

**574.** The judgment of the Appellate Court shall state—

Contents of judgment.

- (a) the points for determination;
- (b) the decision thereupon;
- (c) the reasons for the decision; and

<sup>1</sup> The word "or" was substituted for the word "for" by the Repealing and Amending Act, 1891 (XII of 1891), second schedule, printed, General Acts, Vol VI.

(Part VI.—Of Appeals. Chapter XLI—Of Appeals from original Decrees. Secs. 575-578.)

(d) when the decree appealed against is reversed or varied, the relief to which the appellant is entitled,

Date and  
signature

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

Decision  
when appeal  
heard by  
two or more  
Judges

575. When the appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges.

If there be no such majority which concurs in a judgment varying or reversing the decree appealed against, such decree shall be affirmed:

Provided that if the Bench hearing the appeal is composed of two Judges belonging to a Court consisting of more than two Judges, and the Judges composing the Bench differ in opinion on a point of law, the appeal may be referred to one or more of the other Judges of the same Court, and shall be decided according to the opinion of the majority (if any) of all the Judges who have heard the appeal, including those who first heard it.

When there is no such majority which concurs in a judgment varying or reversing the decree appealed against, such decree shall be affirmed.

The High Court may, from time to time, make rules consistent with this Code to regulate references under this section

Dissent to  
be recorded

576. When the appeal is heard by more Judges than one, any Judge dissenting from the judgment of the Court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same.

What judg-  
ment may  
direct.

577. The judgment may be for confirming, varying or reversing the decree against which the appeal is made, or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be passed in appeal, the Appellate Court may pass a decree or order accordingly.

No decree  
to be reversed  
or modified  
for error or  
irregularity  
not affecting  
merits or  
jurisdiction

578.<sup>1</sup> No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal, on account of any error, defect or irregularity, whether in the decision or in any order passed in the suit, or otherwise, not affecting the merits of the case or the jurisdiction of the Court.

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<sup>1</sup> As to modification of s 578 in cases where objection is taken on appeal, that suit or appeal was not properly valued for jurisdiction purposes, see the Suits Valuation Act, 1887 (VII of 1887), s. 11, printed, General Acts, Vol V, Ed 1898, p 123

(Part VI.—Of Appeals. Chapter XLI.—Of Appeals from original Decrees. Secs 579-582)

*Of the Decree in Appeal.*

579.<sup>1</sup> The decree<sup>2</sup> of the Appellate Court shall bear date the day on which the judgment was pronounced

Date and contents of decree

The decree shall contain the number of the appeal, and the memorandum of appeal, including the names and description of the appellant and respondent, and shall specify clearly the relief granted or other determination of the appeal.

The decree shall also state the amount of costs incurred in the appeal, and by what parties and in what proportions such costs and the costs in the suit are to be paid.

The decree shall be signed and dated by the Judge or Judges who passed it :

Provided that where there are more Judges than one, if there be a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree

Judge dissenting from judgment need not sign decree

580. Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Court and at their expense.

Copies of judgment and decree to be furnished to parties.

581. A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree appealed against, and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the register of civil suits<sup>3</sup>

Certified copy of decree to be sent to Court whose decree appealed against

582. The Appellate Court shall have, in appeals under this Chapter, the same powers, and shall perform as nearly as may be the same duties, as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted under Chapter V ; and, in Chapter XXI, so far as may be, <sup>4</sup> [the word "plaintiff" shall be held to include a plaintiff-appellant or defendant-appellant, the word "defendant" a plaintiff-respondent or defendant-respondent, and the word "suit" an appeal], in proceedings arising out of the death, marriage or insolvency of parties to an appeal.

Appellate Court to have same powers as Courts of original jurisdiction.

<sup>1</sup> S 579 does not apply to the chartered High Courts or to the Punjab Chief Court in the exercise of appellate jurisdiction, *see* s 638 *infra*, and the Punjab Courts Act, 1884 (XVIII of 1884), s 16 (3), in the revised edition, as modified up to 1st April, 1891, published by the Legislative Department

<sup>2</sup> For form of decree, *see* Sch IV, No 176, *infra*

<sup>3</sup> *See* s 58 (last clause) *infra*.

<sup>4</sup> These words in s 582 were substituted for the words "the words 'plaintiff,' 'defendant' and 'suit' shall be held to include an appellant, a respondent and an appeal, respectively," by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 53, printed, General Acts, Vol V, Ed 1898, p 232

(Part VI.—Of Appeals. Chapter XLI.—Of Appeals from original Decrees Secs. 582A-583. Chapter XLII.—Of Appeals from Appellate Decrees. Sec. 584)

The provisions hereinbefore contained, <sup>1</sup> [including those of section 372A,] shall apply to appeals under this Chapter so far as such provisions are applicable.

Validation  
of certain  
memoranda  
of appeals or  
applications  
for review of  
judgment

582A.<sup>2</sup> If a memorandum of appeal or application for a review of judgment has been presented within the proper period of limitation,<sup>3</sup> but is written upon paper insufficiently stamped and the insufficiency of the stamp was caused by a mistake on the part of the appellant or applicant as to the amount of the requisite stamp, the memorandum of appeal or application shall have the same effect and be as valid as if it had been properly stamped. Provided that such appeal or application shall be rejected unless the appellant or applicant supplies the requisite stamp within a reasonable time after the discovery of the mistake, to be fixed by the Court.

Execution  
of decree of  
Appellate  
Court

583. When a party entitled to any benefit (by way of restitution or otherwise) under a decree passed in an appeal under this Chapter desires to obtain execution of the same, he shall apply to the Court which passed the decree against which the appeal was preferred; and such Court shall proceed to execute the decree passed in appeal, according to the rules hereinbefore prescribed <sup>4</sup> for the execution of decrees in suits.

## CHAPTER XLII <sup>5</sup>

### OF APPEALS FROM APPELLATE DECREES.

Second  
appeals to  
High Court

584.<sup>6</sup> Unless, when otherwise provided by this Code or by any other law, from all decrees passed in appeal by any Court subordinate to a High

<sup>1</sup> These words and figures were inserted by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), printed, General Acts, Vol V, Ed 1898, p 232

<sup>2</sup> S 582A was added by the Court of Wards Act (Bengal) Amendment Act, 1892 (IV of 1892), s 3, printed, Assam Code, Ed 1897, p 201

<sup>3</sup> For proper period of limitation in such cases, see the Indian Limitation Act, 1877 (XV of 1877), Sch II, Articles 151, 152, 156, 160A and 162, printed, General Acts, Vol III, Ed. 1898, p 75

<sup>4</sup> See Ch XIX, *supra*

<sup>5</sup> Ch XLII has been repealed in Ajmere and Merwara, see s 2 and schedule of the Ajmere Courts Regulation, 1877 (I of 1877), printed, Ajmere Code, Ed 1893, p 147, and *supra*, s 3

<sup>6</sup> In the Andaman and Nicobar Islands substitute the following for s 584 —“Unless when otherwise provided by this Code or by any other law, from all decrees passed in appeal by any Court subordinate to the High Court, reversing or modifying the decision of the Court of Original Jurisdiction on a point material to the merits of the case, an appeal shall lie to the High Court, if it appears to that High Court, on a perusal of the ground of appeal and of copies of the judgments of the Courts below, that a further consideration of the case is requisite for the ends of justice” See the Andaman and Nicobar Islands Regulation, 1884 (I of 1884), s 4, printed, Gazette of India, 1884, Pt I, p 15

(Part VI.—Of Appeals. Chapter XLII—Of Appeals from Appellate Decrees. Secs. 585-587)

Court, an appeal shall lie to the High Court on any of the following grounds, namely:—

Grounds of second appeal.

- (a) the decision being contrary to some specified law or usage having the force of law;
- (b) the decision having failed to determine some material issue of law or usage having the force of law;
- (c) a substantial error or defect in the procedure as prescribed by this Code or any other law, which may possibly have produced error or defect in the decision of the case upon the merits.

<sup>1</sup>[An appeal may lie under this section from an appellate decree passed *ex parte*.]

585.<sup>2</sup> No second appeal shall lie except on the grounds mentioned in section 584.

Second appeal on no other grounds  
No second appeal in certain suits

586.<sup>3</sup> No second appeal shall lie in any suit of the nature cognizable in Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees.

587. The provisions contained in Chapter XLI shall apply, as far as may be, to appeals under this Chapter,<sup>4</sup> and to the execution of decrees passed in such appeals.

Provisions as to second appeals

<sup>1</sup> The last paragraph of s 584 was added by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 54, printed, General Acts, Vol V, Ed 1898, p 232

<sup>2</sup> In Coorg add to s 585 —“Provided that in any case in which the decision of the Court of the Commissioner or Assistant Commissioner passed in appeal reverses or modifies the decree or order of the Court of original jurisdiction and is not declared by any law for the time being in force to be final, the Court of the Judicial Commissioner may admit a second appeal, if, on a perusal of the grounds of appeal and of copies of the judgments of the lower Courts, it is of opinion that a further consideration of the case is requisite for the ends of justice” See the Coorg Courts Regulation, 1881 (II of 1881), s 12A, printed, Coorg Code, Ed 1893, p 135

<sup>3</sup> In Coorg substitute for the word “five” in s 586 the word “three,” and add the following to the same section, namely —“Provided that the Court of the Judicial Commissioner may admit a second appeal in such suits when the amount or value exceeds one hundred rupees, if, on a perusal of the grounds of appeal and of copies of the judgments of the lower Courts, it is of opinion that a further consideration of the case is requisite for the ends of justice” See the Coorg Courts Regulation, 1881 (II of 1881), s 12B, printed, Coorg Code, Ed 1893, p 135

In the Andaman and Nicobar Islands, s 586 is repealed, see the Andaman and Nicobar Islands Regulation, 1884 (I of 1884), s 4, printed, Gazette of India, 1884, Pt I, p 15

<sup>4</sup> For further power of the High Court in Bengal as to settlement of rent, see the Bengal Tenancy Act, 1885 (VIII of 1885), s 108 (3), printed, Bengal Code, Vol I, Ed 1889, p 503.

For form of register of appeals from appellate decrees, see Sch IV, No 177, *infra*; and for power of chartered High Courts to alter that form, see s 644, *infra*.

## CHAPTER XLIII.

## OF APPEALS FROM ORDERS.

Orders  
appealable

588.<sup>1</sup> An appeal shall lie from the following orders under this Code, and from no other such orders:—

- (1) orders under section 20, staying proceedings in a suit;
- (2) orders under section 32, striking out or adding the name of any person as plaintiff or defendant;
- (3) orders under section 36 or section 66 directing that a party shall appear in person;
- (4) orders under section 44, adding a cause of action;
- (5) orders under section 47, excluding a cause of action;
- (6) orders returning plaints for amendment or to be presented to the proper Court;
- (7) orders under section 111, setting-off, or refusing to set-off, one debt against another;
- (8) orders rejecting applications under section 103 (in cases open to appeal) for an order to set aside the dismissal of a suit;
- (9) orders rejecting applications under section 108 [for]<sup>2</sup> an order to set aside a decree *ex parte*;
- (10) orders under sections 113, 120 and 177;
- (11) orders under sections 116 or section 245, rejecting, or returning for amendment, written statements or applications for execution of decrees;
- (12) orders under sections 143 and 145, directing anything to be impounded;
- (13) orders under section 162, for the attachment and sale of moveable property;
- (14) orders under section 168 for attachment of property, and orders under section 170 for the sale of attached property;
- (15) orders under section 261, as to objections to draft-conveyances or draft-endorsements;
- (16) orders under section 294, <sup>3</sup>[and orders under] section 312 or

<sup>1</sup> See note to clause (29) of this section, *infra*

<sup>2</sup> The word "for" in cl 9 of s 588 was substituted by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 55 (1), printed, General Acts, Vol V, Ed 1898, p 232

<sup>3</sup> These words in clause (16) of s 588 were substituted for the words "the first paragraph of" by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 55 (2)

(Part VI.—Of Appeals. Chapter XLIII.—Of Appeals from Orders.  
Sec 589.)

- section 313, for confirming, or setting aside, or refusing to set aside, a sale of immoveable property;
- (17) orders in insolvency-matters, under section 351, section 352, section 353 or section 357;
  - (18) orders under section 366, paragraph 2, section 367 or section 368;
  - (19) orders rejecting applications under section 370 for dismissal of a suit;
  - (20) orders under section 371, refusing to set aside the abatement or dismissal of a suit;
  - (21) orders disallowing objections under section 372;
  - (22) orders under section 454, section 455 or section 458, directing a next friend or guardian for the suit to pay costs;
  - (23) orders in interpleader-suits under section 473, clause (a), (b) or (d), section 475 or section 476;
  - (24) orders under section 479, section 480, section 485, section 492, section 493, section 496, section 497, section 502 or section 503;
  - (25) orders under section 514, superseding an arbitration;
  - (26) orders under section 518, modifying an award;
  - (27) orders of refusal under section 558 to re-admit, or under section 560 to re-hear, an appeal;
  - (28) orders under section 562, remanding a case;
  - (29)<sup>1</sup> orders under any of the provisions of this Code, imposing fines, or for the arrest or imprisonment of any person, except when such imprisonment is in execution of a decree.

The orders passed in appeals under this section shall be final.

589.2 \* \* \* \* \*

When an appeal from any<sup>2</sup> order is allowed by this Chapter, it shall lie to the Court to which an appeal would lie from the decree in the suit in relation to which such order was made, or, when such order is passed by a Court (not being a High Court) in the exercise of appellate jurisdiction, then to the High Court:

What Courts  
to hear  
appeals

<sup>1</sup> Appeals against orders of Small Cause Courts under cl (29) lie to District Courts, see the Provincial Small Cause Courts Act, 1887 (IX of 1887), s. 24, printed, General Acts, Vol V, Ed 1898, p 128

<sup>2</sup> The first paragraph and the word "other" in this, the second, paragraph of s 589 were repealed by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 56, printed, General Acts, Vol V, Ed 1898, p 232

(Part VI—Of Appeals. Chapter XLIII.—Of Appeals from Orders. Secs. 590-591. Chapter XLIV.—Of Pauper Appeals. Secs. 592-593.)

<sup>1</sup> Provided that an appeal from an order specified in section 588, clause (17), shall lie—

(a) to the District Court, where the order was passed by a Court subordinate to that Court, and

(b) to the High Court in any other case.

Procedure  
in appeals  
from orders

590. The procedure prescribed in Chapter XLI shall, so far as may be, apply to appeals from orders under this Code, or under any special or local law in which a different procedure is not provided.

No other  
appeal from  
orders; but  
error therein  
may be set  
forth in  
memorandum  
of appeal  
against  
decree.

591. Except as provided in this Chapter, no appeal shall lie from any order passed by any Court in the exercise of its original or appellate jurisdiction, but, if any decree be appealed against any error, defect or irregularity in any such order, affecting the decision of the case, may, be set forth as a ground of objection in the memorandum of appeal.

## CHAPTER XLIV.

### OF PAUPER APPEALS.

Who may  
appeal as  
pauper.

592. Any person entitled under this Code or any other law to prefer an appeal, who is unable to pay the fee required for the petition of appeal, may, on presenting an application<sup>2</sup> accompanied by a memorandum of appeal, be allowed to appeal as a pauper, subject to the rules contained in Chapters XXVI, XLI, XLII and XLIII, in so far as those rules are applicable:

Procedure on  
application  
for admission  
of appeal.

Provided that the Court shall reject the application, unless, upon a perusal thereof and of the judgment and decree against which the appeal is made, it sees reason to think that the decree appealed against is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust.

Inquiry into  
pauperism

593. The inquiry into the pauperism of the applicant may be made either by the Appellate Court or by the Court against whose decision the appeal is made under the orders of the Appellate Court:

Proviso.

Provided that, if the applicant was allowed to sue or appeal as a pauper in the Court against whose decree the appeal is made, no further inquiry in

<sup>1</sup> This proviso was added by the Presidency Small Cause Courts Law Amendment Act, 1888 (X of 1888), s 3, printed, General Acts, Vol V, Ed 1898, p. 251

<sup>2</sup> For Court-fee on such applications, see the Court-fees Act, 1870 (VII of 1870), Sch II, art. 3, printed, General Acts, Vol II, Ed 1898, p. 161

For limitation, see the Indian Limitation Act, 1877 (XV of 1877), Sch II, art 170, printed, General Acts, Vol III, Ed. 1898, p. 105

respect of his pauperism shall be necessary, unless the Appellate Court sees special cause to direct such inquiry.

## CHAPTER XLV.

### OF APPEALS TO THE QUEEN IN COUNCIL.

**594.** In this Chapter, unless there be something repugnant in the subject or context, the expression "decree" includes also judgment and order. "Decree" defined.

**595.** Subject to such rules as may, from time to time, be made by Her Majesty in Council regarding appeals, from the Courts of British India, and to the provisions hereinafter contained, When appeals lie to Queen in Council.

an appeal shall lie to Her Majesty in Council—

- (a) from any final decree passed on appeal by a <sup>1</sup> High Court or any other Court of final appellate jurisdiction;
- (b) from any final decree passed by a High Court<sup>1</sup> in the exercise of original civil jurisdiction, and
- (c) from any decree, when the case, as hereinafter provided, is certified to be a fit one for appeal to Her Majesty in Council.

**596.** In each of the cases mentioned in clauses (a) and (b) of section 595, Value of subject-matter.

the amount or value of the subject-matter of the suit in the Court of first instance must be ten thousand rupees or upwards, and the amount or value of the matter in dispute on appeal to Her Majesty in Council must be the same sum or upwards,

or the decree must involve, directly or indirectly, some claim or question to, or respecting, property of like amount or value,

and where the decree appealed from affirms the decision of the Court immediately below the Court passing such decree, the appeal must involve some substantial question of law.

**597.** Notwithstanding anything contained in section 595,

no appeal shall lie to Her Majesty in Council from the judgment of one Judge of a High Court established under the twenty-fourth and twenty-fifth of Victoria, Chapter 104,<sup>2</sup> or of one Judge of a Division Court, or of two or more Judges of such High Court, or of a Division Court constituted by two or more Judges of such High Court, wherever such Judges are Bar of certain appeals.

<sup>1</sup> "High Court" in these two clauses includes the Recorder of Rangoon, *see s 614, infra.*

<sup>2</sup> The Indian High Courts Act, 1861, printed, Collection of Statutes relating to India, Ed. 1881, Vol II, p 713.

(Part VI.—Of Appeals. Chapter XLV.—Of Appeals to the Queen in Council. Secs. 598-602.)

equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the High Court at the time being;

and no appeal shall lie to Her Majesty in Council from any decree which, under section 586, is final.

Application  
to Court  
whose decree  
complained  
of.

598. Whoever desires to appeal under this Chapter to Her Majesty in Council must apply by petition to the Court whose decree is complained of.

599. [*Time within which application must be made*] *Rep. by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), section 57.*

Certificate  
as to value  
or fitness

600. Every petition under section 598 must state the grounds of appeal, and pray for a certificate either that, as regards amount or value and nature, the case fulfils the requirements of section 596, or that it is otherwise a fit one for appeal to Her Majesty in Council.

Upon receipt of such petition, the Court may direct notice to be served on the opposite party to show cause why the said certificate should not be granted.

Effect of  
refusal of  
certificate

601. If such certificate be refused, the petition shall be dismissed:

Provided that, if the decree complained of be a final decree passed by a Court other than a High Court, the order refusing the certificate shall be appealable<sup>1</sup> \* \* \* \* \* to the High Court to which the former Court is subordinate.

Security  
and deposit  
required on  
grant of  
certificate

602. If the certificate be granted, the applicant shall, within six months from the date of the decree complained of, or within six weeks from the grant of the certificate, whichever is the later date—

- (a) give security for the costs of the respondent, and
- (b) deposit the amount required to defray the expense of translating, transcribing, indexing and transmitting to Her Majesty in Council a correct copy of the whole record of the suit, except—
  - (1) formal documents directed to be excluded by any order of Her Majesty in Council in force for the time being;
  - (2) papers which the parties agree to exclude;
  - (3) accounts, or portions of accounts which the officer empowered by the Court for that purpose considers unnecessary, and which the parties have not specifically asked to be included; and
  - (4) such other documents as the High Court may direct to be excluded:

<sup>1</sup> The words "within thirty days from the date of the order" in s 601 were repealed by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 57, printed, General Acts, Vol V, Ed. 1898, p 232

(Part VI.—Of Appeals. Chapter XLV.—Of Appeals to the Queen in Council. Secs 603-608)

and when the applicant prefers to print in India the copy of the record, except as aforesaid, he shall also, within the time mentioned in the first clause of this section, deposit the amount required to defray the expense of printing such copy.

603. When such security has been completed and deposit made to the satisfaction of the Court, the Court may—

Admission  
of appeal  
and pro-  
cedure  
thereon.

- (a) declare the appeal admitted, and
- (b) give notice thereof to the respondent, and shall then
- (c) transmit to Her Majesty in Council under the seal of the Court, a correct copy of the said record, except as aforesaid, and
- (d) give to either party one or more authenticated copies of any of the papers in the suit on his applying therefor and paying the reasonable expenses incurred in preparing them.

604. At any time before the admission of the appeal, the Court may, upon cause shown, revoke the acceptance of any such security, and make further directions thereon.

Revocation  
of accept-  
ance of  
security

605. If at any time after the admission of the appeal, but before the transmission of the copy of the record, except as aforesaid, to Her Majesty in Council, such security appears inadequate, .

Power  
to order  
further  
security or  
payment

or further payment is required for the purpose of translating, transcribing, printing, indexing or transmitting the copy of the record, except as aforesaid,

the Court may order the appellant to furnish, within a time to be fixed by the Court, other and sufficient security, or to make, within like time, the required payment.

606. If the appellant fail to comply with such order, the proceedings shall be stayed,

Effect of  
failure to  
comply with  
order.

and the appeal shall not proceed without an order in this behalf of Her Majesty in Council,

and in the meantime execution of the decree appealed against shall not be stayed.

607. When the copy of the record, except as aforesaid, has been transmitted to Her Majesty in Council, the appellant may obtain a refund of the balance, if any, of the amount which he has deposited under section 602.

Refund of  
balance of  
deposit

608. Notwithstanding the admission of any appeal under this Chapter, the decree appealed against shall be unconditionally enforced, unless the Court admitting the appeal otherwise directs.

Powers of  
Court  
pending  
appeal.

But the Court may, if it thinks fit, on any special cause shown by any party interested in the suit, or otherwise appearing to the Court,

- (a) impound any moveable property in dispute or any part thereof, or
- (b) allow the decree appealed against to be enforced, taking such security from the respondent as the Court thinks fit for the due performance of any order which Her Majesty in Council may make on the appeal, or
- (c) stay the execution of the decree appealed against, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed against, or of any order which Her Majesty in Council may make on the appeal, or
- (d) place any party seeking the assistance of the Court under such conditions, or give such other direction respecting the subject-matter of the appeal as it thinks fit.

Increase of  
security  
found inade-  
quate.

**609.** If, at any time during the pendency of the appeal, the security so furnished by either party appears inadequate, the Court may, on the application of the other party, require further security.

In default of such further security being furnished as required by the Court, if the original security was furnished by the appellant, the Court may, on the application of the respondent, issue execution of the decree appealed against as if the appellant had furnished no such security.

And, if the original security was furnished by the respondent, the Court shall, so far as may be practicable, stay all further execution of the decree, and restore the parties to the position in which they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subject-matter of the appeal as it thinks fit.

Procedure  
to enforce  
orders of  
Queen in  
Council.

**610.** Whoever desires to enforce or to obtain execution of any order of Her Majesty in Council shall apply by petition, accompanied by a certified copy of the decree or order made in appeal and sought to be enforced or executed, to the Court from which the appeal to Her Majesty was preferred.

Such Court shall transmit the order of Her Majesty to the Court which made the first decree appealed from, or to such other Court as Her Majesty by Her said order may direct, and shall (upon the application of either party) give such directions as may be required for the enforcement or execution of the same; and the Court to which the said order is so transmitted

(Part VI.—Of Appeals. Chapter XLV.—Of Appeals to the Queen in Council. Secs. 611-612.)

shall enforce or execute it accordingly, in the manner and according to the rules applicable to the execution of its original decrees.<sup>1</sup>

<sup>2</sup> [In so far as the order awards costs to the respondent, it may be executed against a surety therefor, to the extent to which he has rendered himself liable, in the same manner as it may be executed against the appellant:]

Provided that such notice in writing as the Court in each case thinks sufficient has been given to the surety.]

When any moneys expressed to be payable in British currency are payable in India under such order, the amount so payable shall be estimated according to the rate of exchange for the time being fixed by the Secretary of State for India in Council, with the concurrence of the Lords Commissioners of Her Majesty's Treasury, for the adjustment of financial transactions between the Imperial and the Indian Governments.

611. The orders made by the Court which enforces or executes the order of Her Majesty in Council, relating to such enforcement or execution, shall be appealable in the same manner and subject to the same rules as the orders of such Court relating to the enforcement or execution of its own decrees.

Appeal  
against  
order relating  
to execution.

612. The High Court<sup>3</sup> may, from time to time, make rules consistent with this Act to regulate—

Power to  
make rules.

- (a) the service of notices under section 600;
- (b) the grant or refusal of certificates, under sections 601 and 602, by Courts of final appellate jurisdiction subordinate to the High Court;
- (c) the amount and nature of the security required under sections 602, 605 and 609;
- (d) the testing of such security;
- (e) the estimate of the cost of transcribing the record;
- (f) the preparation, examination and certifying of such transcript;

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<sup>1</sup> See Ch. XIX, *supra*

<sup>2</sup> These two paragraphs were added to s. 610 by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s. 58, printed, General Acts, Vol. V, Ed. 1898, p. 232

<sup>3</sup> "High Court" in s. 612 includes the Recorder of Rangoon, see s. 614, *infra*.

(Part VI.—Of Appeals. Chapter XLV.—Of Appeals to the Queen in Council. Secs. 613-616.)

- (g) the revision and authentication of translations ;
- (h) the preparation of indices to transcripts of records, and of lists of the papers not included therein ;
- (i) the recovery of costs incurred in British India in connection with appeals to Her Majesty in Council ;<sup>1</sup>

and all other matters connected with the enforcement of this Chapter.

Publication  
of rules

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law in the High Court and the Courts of final appellate jurisdiction subordinate thereto.

Legalization  
of existing  
rules

**613.** All rules heretofore made and published by any High Court relating to appeal to Her Majesty in Council, and in force immediately before the passing of this Act, shall, so far as they are consistent with this Act, be deemed to have been made and published hereunder.

Recorder of  
Rangoon.

**614.** In sections 595 and 612, the expression "High Court" shall be deemed to include also the Recorder of Rangoon, but not so as to empower him to make rules binding on Courts other than his own Court.

Construction  
of Bengal  
Regulation  
III of 1828,  
section 4,  
clause 5.

**615.** The rules and restrictions referred to in Bengal Regulation III of 1828,<sup>2</sup> section IV, clause *fifth*, shall be deemed to be the rules and restrictions applicable to appeals under this Code from the decisions of the High Court of Judicature at Fort William in Bengal.

Saving  
of Her  
Majesty's  
pleasure,

**616.** Nothing herein contained shall be understood—

- (a) to bar the full and unqualified exercise of Her Majesty's pleasure in receiving or rejecting appeals to Her Majesty in Council, or otherwise howsoever, or
- (b) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to Her Majesty in Council, or their conduct before the said Judicial Committee.

and of rules  
for conduct of  
business  
before Judi-  
cial Com-  
mittee

And nothing in this Chapter applies to any matter of criminal or admiralty or vice-admiralty jurisdiction, or to appeals from orders and decrees of Prize Courts.

<sup>1</sup> For rules for the Central Provinces under this clause, see the Central Provinces Gazette, 1887, Pt II, p 112

<sup>2</sup> Printed, Bengal Code, Ed 1889, Vol I, p 240

## PART VII.

### CHAPTER XLVI<sup>1</sup>

#### OF REFERENCE TO AND REVISION BY THE HIGH COURT.

**617.** If before or on the hearing of a suit or an appeal in which the decree is final,<sup>2</sup> or if in the execution of any such decree, any question of law or usage having the force of law, or the construction of a document, which construction may affect the merits, arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court.

Reference  
of question  
to High  
Court

**618** <sup>3</sup> The Court may either stay the proceedings or proceed in the case notwithstanding such reference, and may pass a decree or order contingent upon the opinion of the High Court on the point referred;

Court may  
pass decree  
contingent  
upon opinion  
of High  
Court

but no execution shall be issued, property sold or person imprisoned in any case in which such reference is made until the receipt of a copy of the judgment of the High Court upon such reference.

**619.**<sup>3</sup> The High Court shall hear the parties to the case in which the reference is made, in person or by their respective pleaders, and shall decide the point so referred, and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made; and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court.

Judgment  
of High  
Court to be  
transmitted,  
and case dis-  
posed of  
accordingly

**620.**<sup>3</sup> Costs, if any, consequent on a reference for the opinion of the High Court, shall be costs in the case.

Costs of  
reference  
to High  
Court

**621.** When a case is referred to the High Court under this Chapter, the High Court may return the case for amendment, and may alter, cancel or set aside any decree or order which the Court making the reference has

Power to  
alter, etc.,  
decrees of  
Court

<sup>1</sup> This Chapter (XLVI) extends to Provincial Small Cause Courts, *see* s 5 and the second schedule

<sup>2</sup> This includes all appeals to Divisional Courts in the Punjab, except where the value of the suit exceeds five hundred rupees, *see* s 44 of the Punjab Courts Act, 1884 (XVIII of 1884), as modified up to 1st April, 1891, published by the Legislative Department

As to reference by Presidency Small Cause Courts, *see* the Presidency Small Cause Courts Act, 1882 (XV of 1882), s 59, printed, *infra*, p 590

<sup>3</sup> Ss 618-620 have been repealed in Ajmere and Merwára, *see* s 2 and schedule of the Ajmere Courts Regulation, 1877 (I of 1877), printed, Ajmere Code, Ed 1893, p 147, and *supra*, s. 3.

(Part VII. Chapter XLVI.—Of Reference to and Revision by the High Court. Sec 622. Part VIII. Chapter XLVII.—Of Review of Judgment. Sec. 623.)

making  
reference.

passed in the case out of which the reference arose, and make such order as it thinks fit.

Power to  
call for  
record of  
cases not  
appealable  
to High  
Court.

622.<sup>1</sup> The High Court may call for the record of any case in which no appeal lies to the High Court, if the Court by which the case was decided appears to have exercised a jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of its jurisdiction illegally or with material irregularity; and may pass such order in the case as the High Court thinks fit.

## PART VIII.

### CHAPTER XLVII.<sup>2</sup>

#### OF REVIEW OF JUDGMENT.

Application  
for review of  
judgment.

623. Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is hereby allowed, but from which no appeal has been preferred;

(b) by a decree or order from which no appeal is hereby allowed; or

(c) by a judgment on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or

<sup>1</sup> In the Andaman and Nicobar Islands substitute the following for s 622 —

“The High Court may call for the record of any proceeding of a Court subordinate to it, and, if it appears that there has been in the proceeding an error material to the merits of the case, may pass such judgment or order thereon as it thinks fit” See s 4 of the Andaman and Nicobar Islands Regulation, 1884 (I of 1884), printed, Gazette of India, 1884, Pt I, p 15

In the Punjab s 622 is to be read subject to the omission of the words “illegally or” and subject to the modification that for the purposes of the section no appeal shall be deemed to lie from the appellate decree of a Divisional Court to the Chief Court in certain cases, see s 70 of the Punjab Courts Act, 1884 (XVIII of 1884) S 70 is repealed so far as regards Revenue Courts by the Punjab Tenancy Act, 1887 (XVI of 1887), s 3 and schedule For Act XVIII of 1884, see the revised edition, as modified up to 1st April, 1891, published by the Legislative Department, and for Act XVI of 1887, see the Punjab Code, Ed. 1888, p 273

The provisions of s 11 of the Suits Valuation Act, 1887 (VII of 1887), apply to a Court exercising revisional jurisdiction under s 622, see clause (4) of that section, printed, General Acts, Vol V, Ed 1898, p 125.

For Court-fee payable on applications to the Chief Commissioner or the Court of the Financial Commissioner of the Punjab under s 622 and refund thereunder, see the Punjab Courts Act, 1884 (XVIII of 1884), ss 71 & 72

<sup>2</sup> This Chapter (XLVII) extends to Provincial Small Cause Courts, see s. 5 and the second schedule.

could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him,

may apply<sup>1</sup> for a review of judgment to the Court which passed the decree or made the order, or to the Court, if any, to which the business of the former Court has been transferred.

A party who is not appealing from a decree may apply for a review of judgment notwithstanding the pendency of an appeal by some other party, except when the ground of such appeal is common to the applicant and the appellant, or when, being a respondent, he can present to the Appellate Court the case on which he applies for the review.

624. Except upon the ground of the discovery of such new and important matter or evidence as aforesaid, or of some clerical error apparent on the face of the decree, no application for a review of judgment, other than that of a High Court, shall be made to any Judge other than the Judge who delivered it.

To whom applications for review may be made.

625. The rules hereinbefore contained as to the form of making appeals shall apply, *mutatis mutandis*, to applications for review.

Form of applications for review.

626. If it appears to the Court that there is not sufficient ground for a review, it shall reject the application.

Application when rejected

If the Court be of opinion that the application for the review should be granted, it shall grant the same, and the Judge shall record with his own hand his reasons for such opinion:

Application when granted.

Provided that—

Proviso.

- (a) no such application shall be granted without previous notice<sup>2</sup> to the opposite party, to enable him to appear and be heard in support of the decree, a review of which is applied for; and
- (b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him, when the decree or order was passed, without strict proof of such allegation; and

<sup>1</sup> For court-fee on such applications, see the Court-fees Act, 1870 (VII of 1870), Sch I, arts 4 and 5, printed, General Acts, Vol II, Ed 1898, pp 161 and 162

As to limitation, see the Indian Limitation Act, 1877 (XV of 1877), Sch. II, arts. 162 and 173, printed, General Acts, Vol III, Ed 1898, p 75

<sup>2</sup> For form of notice, see Sch IV, No 178, *infra*

- (c) <sup>1</sup>[an application made under section 624 to the Judge who delivered the judgment may, if that Judge has ordered notice to issue under proviso (a) to this section, be disposed of by his successor.]

Application  
for review  
in Court con-  
sisting of two  
or more  
Judges.

**627.** If the Judge or Judges, or any one of the Judges, who passed the decree or order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause, for a period of six months next after the application, from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application and no other Judge or Judges of the Court shall hear the same.

Application  
when  
rejected

**628.** If the application for a review be heard by more than one Judge and the Court be equally divided, the application shall be rejected.

If there be a majority, the decision shall be according to the opinion of the majority.

Order of  
rejection  
final  
Objections  
to admis-  
sion.

**629.** An order of the Court for rejecting the application shall be final; but, whenever such application is admitted, the admission may be objected to on the ground that it was—

- (a) in contravention of the provisions of section 624,
- (b) in contravention of the provisions of section 626, or
- (c) after the expiration of the period of limitation prescribed therefor and without sufficient cause.

Such objection may be made at once by an appeal against the order granting the application, or may be taken in any appeal against the final decree or order made in the suit.

Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply <sup>2</sup> for an order to have the rejected application restored to the file, and, if it be proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court may order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

<sup>1</sup> Proviso (c) to s 626 was added by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s 59, printed, General Acts, Vol. V, Ed 1898, p 232.

<sup>2</sup> For limitation of such applications, see the Indian Limitation Act, 1877 (XV of 1877), Sch. II, art. 160, printed, General Acts, Vol III, Ed 1898, p. 75

(Part VIII. Chapter XLVII—Of Review of Judgment Sec. 630  
Part IX. Chapter XLVIII.—Special Rules relating to the Chartered  
High Courts. Secs. 631-635)

No order shall be made under this section unless the applicant has served the opposite party with notice in writing of the latter application.

No application to review an order passed on review or on an application for a review shall be entertained.

630. When an application for a review is granted, a note thereof shall be made in the register and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.

Registry of  
application  
granted, and  
order for  
re-hearing

## PART IX.

### CHAPTER XLVIII.

#### SPECIAL RULES RELATING TO THE CHARTERED HIGH COURTS.

631. This Chapter applies only to High Courts which are or may hereafter be established under the twenty-fourth and twenty-fifth of Victoria, Chapter 104 (*an Act for establishing High Courts of Judicature in India*).<sup>1</sup>

Chapter  
to apply only  
to certain  
High Courts.

632. Except as provided in this Chapter <sup>2</sup>[and in section 652] the provisions of this Code apply to such High Courts

Application  
of Code to  
High Courts.

633. The High Court shall take evidence, and record judgments and orders in such manner as it by rule from time to time directs.

High  
Court to  
record  
judgments  
according  
to its own  
rules

634. Whenever a High Court considers it necessary that a decree made in the exercise of its ordinary original civil jurisdiction should be enforced before the amount of the costs incurred in the suit can be ascertained by taxation, the Court may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs;

Power  
to order  
execution  
of decree  
before ascer-  
tainment  
of costs, and

and, as to so much thereof as relates to the costs, that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation

execution  
for costs  
subsequently.

635. Nothing in this Code shall be deemed to authorize any person on behalf of another to address the Court in the exercise of its ordinary original

Unauthorized  
persons not

<sup>1</sup> The Indian High Courts Act, 1861, printed, Collection of Statutes relating to India, Vol II, Ed 1881, p 713.

<sup>2</sup> These words and figures were added by s 1 of the Civil Procedure Code Amendment Act, 1895 (XIII of 1895), printed, General Acts, Vol VI

(Part IX. Chapter XLVIII.—*Special Rules relating to the Chartered High Courts. Secs. 636-639.*)

to address  
Court.

civil jurisdiction, or to examine witnesses, except when the Court shall have in the exercise of the power conferred by its charter authorized him so to do, or to interfere with the power of the High Court to make rules concerning advocates, vakils and attorneys.

Who may  
serve process  
of High  
Court.

**636.** Notices to produce documents, summonses to witnesses, and every other judicial process, issued in the exercise of the ordinary or extraordinary original civil jurisdiction of the High Court, and of its matrimonial, testamentary and intestate jurisdictions, except summonses to defendants issued under section 64, writs of execution and notices under section 553, may be served by the attorneys in the suits, or by persons employed by them, or by such other persons as the High Court by any rule or order, from time to time, directs.

Non-judicial  
acts may  
be done by  
Registrar.

**637.** Any non-judicial or quasi-judicial act which this Code requires to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394, may be done by the Registrar of the Court or by such other officer of the Court as the Court may direct to do such act.

The High Court may, from time to time, by rule declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.

Sections not  
applying to  
High Court  
in original  
civil juris-  
diction.

**638.** The following portions of this Code shall not apply to the High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, namely, sections 16, 17 and 19, sections 54, clauses (a) and (b), 57, 119, 160, 182 to 185 (both inclusive), 187, 189, 190, 191, 192 (so far as relates to the manner of taking evidence), 198 to 206 (both inclusive), and so much of section 409 as relates to the making of a memorandum;

and section 579 shall not apply to the High Court in the exercise of its appellate jurisdiction.

Code not  
to affect  
High Court  
in exercise  
of insolvent  
jurisdiction.

**639.** Nothing in this Code shall extend or apply to any Judge of a High Court in the exercise of jurisdiction as an Insolvent Court.

Power to  
frame forms

The High Court may, from time to time, frame forms for any proceeding in such Court, and may make rules as to the books, entries and accounts to be kept by its officers.

## PART X.

CHAPTER XLIX.<sup>1</sup>

## MISCELLANEOUS.

640. Women, who according to the customs and manners of the country ought not to be compelled to appear in public, shall be exempt from personal appearance in Court

Exemption of certain women from personal appearance.

But nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process <sup>2</sup> [in any case in which the arrest of women is not prohibited by this Code].

641. The Local Government may, by notification in the official Gazette, exempt from personal appearance in Court any person whose rank, in the opinion of such Government, entitles him to the privilege of exemption, and may, by like notification, withdraw such privilege.

Local Government may exempt certain persons from personal appearance. Lists of names of persons exempted to be kept in Courts

The names and residences of the persons <sup>3</sup> so exempted shall, from time to time, be forwarded to the High Court by the Local Government, and a list of such persons shall be kept in such Court, and a list of such persons as reside within the local limits of the jurisdiction of each Court subordinate to the High Court shall be kept in such subordinate Court.

When any person so exempted claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he shall pay the costs of that commission, unless the party requiring his evidence pays such costs.

Costs of commission rendered necessary by claiming privilege

642. No Judge, Magistrate or other judicial officer shall be liable to arrest under civil process while going to, presiding in, or returning from, his Court.

Persons exempt from arrest under civil process.

And, <sup>4</sup> [except as provided in section 337A, sub-section (5), and sections 256 and 643] where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtárs, revenue-agents and recognized agents, and their witnesses acting in obedience to a summons, shall

<sup>1</sup> Ch XLIX (except s 648) extends to Provincial Small Cause Courts, *see* s 5 and the second schedule

<sup>2</sup> These words were added by s 6 of the Debtors Act, 1888 (VI of 1888), printed, *General Acts*, Vol V, Ed 1898, p 229.

<sup>3</sup> For exempting notification issued under this section for—

(1) Burma, *see* Burma Gazette, 1893, Pt I, p 154;

(2) Madras, *see* Madras List of Local Rules and Orders, Ed 1898, Vol I, p 197;

(3) North-Western Provinces and Oudh, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed 1894, p 114

<sup>4</sup> These words were substituted for the words “except as provided in ss 256 and 643” by s 7 of the Debtors Act, 1888 (VI of 1888), printed, *General Acts*, Vol V.

be exempt from arrest under civil process while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal.

Procedure  
in case of  
certain  
offences

643. When in a case pending before any Court there appears to the Court sufficient ground for sending for investigation to the Magistrate a charge of any such offence as is described in section 193, section 196, section 199, section 200, section 205, section 206, section 207, section 208, section 209, section 210, section 463, section 471, section 474, section 475, section 476 or section 477 of the Indian Penal Code,<sup>1</sup> which may be made in the course of any other suit or proceeding, or with respect to any document offered in evidence in the case, the Court may cause the person accused to be detained till the rising of the Court, and may then send him in custody to the Magistrate, or take sufficient bail for his appearance before the Magistrate.

XLV of 1860

The Court shall send to the Magistrate the evidence and documents relevant to the charge, and may bind over any person to appear and give evidence before such Magistrate.

The Magistrate shall receive such charge and proceed with it according to law.<sup>2</sup>

Use of  
forms in  
fourth  
schedule.

644. Subject to the power conferred on the High Court by section 639 and by the twenty-fourth and twenty-fifth of Victoria, Chapter 104,<sup>3</sup> section 15, the forms set forth in the fourth schedule hereto annexed, with such variation as the circumstances of each case require, shall be used for the respective purposes therein mentioned.

Language of  
subordinate  
Courts

645. The language which, when this Code comes into force, is the language of any Court subordinate to a High Court shall continue to be the language of such subordinate Court until the Local Government otherwise orders;

but it shall be lawful for the Local Government, from time to time, to declare what language shall be the language of every such Court <sup>4</sup>

<sup>1</sup> Printed, General Acts, Vol I, Ed 1898, p 240

<sup>2</sup> See Ch XXXV of the Code of Criminal Procedure, 1898 (Act V of 1898)

<sup>3</sup> The Indian High Courts Act, 1861, printed, Collection of Statutes relating to India, Ed 1881, Vol II, p. 713

<sup>4</sup> For notification issued under the power conferred by this section.—

(1) in Bombay, see Bombay List of Local Rules and Orders, Ed 1896, Vol I, p 396;

(2) in Burma, see Burma Gazette, 1894, Pt I, p 442; cf also s 17 of the Lower Burma Courts Act, 1889 (XI of 1889), printed, Burma Code, Ed 1889, p. 310;

(3) in Central Provinces, see Central Provinces Gazette, 1888, Pt II, p 54, and 1895, Pt III, p 15,

(4) Madras, see Madras List of Local Rules and Orders, Ed 1898, Vol I, p 197

**645A.** In any Admiralty or Vice-Admiralty cause of salvage, towage or collision, the Court, whether it be exercising its original or its appellate jurisdiction, may, if it thinks fit, and upon request of either party to such cause shall, summon to its assistance, in such manner as the Court may by rule, from time to time, direct, two competent assessors; and such assessors shall attend and assist accordingly.

Assessors  
in causes  
of salvage,  
etc

Every such assessor shall receive such fees for his attendance as the Court by rule prescribes. Such fees shall be paid by such of the parties as the Court in each case may direct.

**646.** Whenever the Registrar of a Court of Small Causes has any doubt upon any question of law or usage having the force of law, or as to the construction of a document, which construction may affect the merits of the decision, he may state a case for the opinion of the Judge; and all the provisions herein contained relative to the stating of a case by the Judge shall apply, *mutatis mutandis*, to the stating of a case by the Registrar.

Power of  
Registrars  
of Small  
Cause Courts  
to state cases.

**646A.<sup>1</sup>** (1) If at any time before judgment a Court in which a suit has been instituted doubts whether the suit is cognizable by a Court of Small Causes or is not so cognizable, it may submit the record to the High Court with a statement of its reasons for the doubt as to the nature of the suit.

Power to  
refer to  
High Court  
questions as  
to jurisdiction  
in small  
causes

(2) On receiving the record and statement the High Court may order the Court either to proceed with the suit or to return the plaint for presentation in such other Court as it may in its order declare to be competent to take cognizance of the suit.

**646B.<sup>1</sup>** (1) If it appears to a District Court that a Court subordinate thereto has, by reason of erroneously holding a suit to be cognizable by a Court of Small Causes or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not so vested, the District Court may, and if required by a party shall, submit the record to the High Court with a statement of its reasons for considering the opinion of the subordinate Court with respect to the nature of the suit to be erroneous.

Power to  
District  
Court to  
submit for  
revision  
proceedings  
had under  
mistake as  
to jurisdic-  
tion in small  
causes.

(2) On receiving the record and statement the High Court may pass such order in the case as it thinks fit.

(3) With respect to any proceedings subsequent to decree in any case

<sup>1</sup> Ss 646A and 646B were inserted by s 60 of the Debtors Act, 1888 (VI of 1888), printed, General Acts, Vol V, Ed 1898, p 229

submitted to the High Court under this section, the High Court may make such order as in the circumstances appears to it to be just and proper.

(4) A Court subordinate to a District Court shall comply with any requisition which the District Court may make for any record or information for the purposes of this section.

Miscellaneous proceedings.

**647.** The procedure herein prescribed shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction other than suits and appeals.

Admission of affidavits as evidence

The High Court may, from time to time, make rules to provide for the admission, in such proceedings, of affidavits as evidence of the matters to which such affidavits respectively relate; and such rules, on being published in the local official Gazette, shall have the force of law.

<sup>1</sup>[*Explanation.*—This section does not apply to applications for the execution of decrees, which are proceedings in suits ]

Procedure when person to be arrested or property to be attached is outside district.

**648.** Where any Court desires that any person shall be arrested or that any property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or property is situate outside the local limits of its jurisdiction, the Court may, in its discretion, issue a warrant of arrest or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

The District Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a Court subordinate to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment:

<sup>2</sup>and the Court making an arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he shows cause to the satisfaction of the former Court why he should not be sent to the latter Court, or unless he furnishes sufficient security for his appearance before the latter Court or (where the case is one under Chapter XXXIV) for satisfying any decree that may be passed against him by that Court, in either of which cases the Court making the arrest shall release him.

<sup>1</sup> This "Explanation" was added by s 4 of the Indian Limitation Act and Civil Procedure Code Amendment Act, 1892 (VI of 1892), printed, General Acts, Vol VI

<sup>2</sup> This paragraph was substituted by s 61 (I) of the Civil Procedure Code Amendment Act, 1888 (VII of 1888), printed, General Acts, Vol V, Ed 1898, p 232

<sup>1</sup> Where a person to be arrested or moveable property to be attached under this section is within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal or at Madras or Bombay, or of the Court of the Recorder of Rangoon, the copy of the warrant of arrest or of the order of attachment, and the probable account of the costs of the arrest or attachment, shall be sent to the Court of Small Causes of Calcutta, Madras, Bombay or Rangoon, as the case may be, and that Court, on receipt of the copy and account, shall proceed as if it were the District Court.

649. The rules contained in Chapter XIX shall apply to the execution of any judicial process for the arrest of a person or the sale of property or payment of money, which may be desired or ordered by a Civil Court in any civil proceeding.

Rules applicable to all civil process for arrest, sale or payment.

In the same chapter the expression "Court which passed a decree", or words to that effect, shall, unless there is something repugnant in the context, be deemed to include, where the decree to be executed is passed in appeal, the Court which passed the decree against which the appeal was preferred, and, where the Court which passed the decree to be executed has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed were instituted at the time of making application for execution of the decree, would have jurisdiction to try such suit.

650.<sup>1</sup> The provisions of Chapters XIV and XV relating to witnesses shall apply to all persons required to give evidence or to produce documents in any proceeding under this Code.

Application of rules as to witnesses

650A. Summonses issued by any Civil or Revenue Court situate beyond the limits of British India may be sent to the Courts in British India and served as if they had been issued by such Courts: Provided that the Courts issuing such summonses have been established <sup>2</sup>[or continued] by the authority of the Governor General in Council,<sup>3</sup> or that the Governor Gen-

Service of foreign summonses.

<sup>1</sup> The last paragraph was added by s. 61 (2) of the Civil Procedure Code Amendment Act, 1888 (VII of 1888), printed, General Acts, Vol V, Ed 1898, p. 232

<sup>2</sup> These words were inserted by s. 62 of the Civil Procedure Code Amendment Act, 1888 (VII of 1888).

<sup>3</sup> For lists of such Courts, see Notifications No. 1361-I, dated 29th March, 1889, and No. 2179-I, dated 2nd July, 1890, printed at pp. 372 and 373 of the Western India Volume of Macpherson's Lists of British Enactments in force in Native States, Ed. 1895.

## (Part X. Chapter XLIX.—Miscellaneous Sec 652)

eral in Council has, by notification in the Gazette of India, declared the provisions of this section to apply to such Courts.<sup>1</sup>

The Governor General in Council may, by like notification, cancel any notification made under this section, but not so as to invalidate the service of any summons served previous to such cancellation.

**651.** [*Penalty for resisting apprehension or escaping from custody under Code or civil process*] *Rep by the Indian Criminal Law Amendment Act, 1886 (X of 1886), section 24 (2).*

**652.** The High Court may, from time to time, make rules consistent with this Code to regulate any matter connected with its own procedure or the procedure of the Courts of the Civil Judicature subject to its superintendence. All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

<sup>2</sup> A High Court not established under the Statute 24 and 25 Victoria, Chapter 104 (*an Act for establishing High Courts of Judicature in India*)<sup>3</sup> may, from time to time, with the previous sanction of the Local Government, make, with respect to any matter other than procedure, any rule which any High Court so established might under section 15 of that Statute make with respect to any such matter for any part of the territories under its jurisdiction which is not included within the limits of a presidency-town. Rules so made shall be published in the same manner, and shall thereupon have the same force, as rules made and published under this section for the regulation of matters connected with procedure.

<sup>4</sup> Notwithstanding anything in this Code contained, any High Court established under the said Act for establishing High Courts of Judicature in India may make such rules consistent with the Letters Patent establishing it to regulate its own procedure in the exercise of its original civil jurisdiction, as it shall think fit.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

<sup>1</sup> For lists of Courts to which this section has been applied, *see* Notifications No 868-I, dated 13th March, 1885, No 1727-I, dated 20th May, 1885, No 2266-I, dated 10th July, 1885, No 2361-I, dated 17th July, 1885, printed at pp 381 to 384 of the Western India Volume of Macpherson's Lists of British Enactments in force in Native States, Ed 1895 For later Notifications, *see* Gazette of India, 1895, Pt I, p 561, 1895, Pt I, p. 855; 1897, Pt I, pp 862 and 1061 Under the section it has been declared that the summonses of any Court in Mysore and in certain States under the Central India Agency may be sent for service to Courts in British India, *see* p 74 of the Southern India, Madras and Mysore Volume of Macpherson's Native States Lists, Ed 1888, and Gazette of India, 1896, Pt I, p 181, and 1898, Pt I, p. 1085, respectively

<sup>2</sup> The second paragraph of s 652 was added by s 63 of the Civil Procedure Code Amendment Act, 1888 (VII of 1888), printed, General Acts, Vol V, Ed 1898, p 232

<sup>3</sup> The Indian High Courts Act, 1861, printed, Collection of Statutes relating to India, Ed. 1881, Vol II, p 713

<sup>4</sup> This paragraph was added by s 2 of the Civil Procedure Code Amendment Act, 1895 (XIII of 1895), printed, General Acts, Vol VI

*(Part X. Chapter XLIX.—Miscellaneous. Sec. 653. The First Schedule.)*

**653.<sup>1</sup>** (1) At any time after a warrant of arrest has been issued under this Code, the Court may cancel it on the ground of the serious illness of the person against whom the warrant was issued.

Release on  
ground of  
illness of  
judgment-  
debtor

(2) When a judgment-debtor has been arrested under this Code the Court may release him if in its opinion he is not in a fit state of health to undergo imprisonment.

(3) When a judgment-debtor has been committed to jail he may be released therefrom—

(a) by the Local Government, on the ground of his suffering from any infectious or contagious disease, or

(b) by the committing Court, or any Court to which that Court is subordinate, on the ground of his suffering from any serious illness.

(4) A judgment-debtor released under this section may be re-arrested, but the period of his imprisonment shall not in the aggregate exceed that prescribed in section 342 or section 481, as the case may be.

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THE FIRST SCHEDULE.

*(See section 3.)*

ACTS REPEALED.

Number and year.	Subject or title	Extent of repeal
X of 1877 .	The Code of Civil Procedure	So much as has not been repealed.
XII of 1879 .	Amending Act X of 1877, etc	Sections 1 to 103 (both inclusive).
VII of 1880 .	Merchant Shipping . . .	Section 85.

<sup>1</sup> S 653 was added by s 8 of the Debtors Act, 1888 (VI of 1888), printed, *General Acts*, Vol V, Ed 1898, p 229

THE SECOND SCHEDULE.<sup>1</sup>

(See section 5)

CHAPTERS AND SECTIONS OF THIS CODE EXTENDING TO PROVINCIAL COURTS  
OF SMALL CAUSES

PRELIMINARY: Sections 1, 2, 3 and 5.

CHAPTER I.—Of the Jurisdiction of the Courts and *Res Judicata*, except section 11 and the last paragraph of section 14.

CHAPTER II.—Of the Place of Suing, except section 20, paragraph 4, and sections 22 to 24 (both inclusive).

CHAPTER III.—Of Parties and their appearances, Applications and Acts

CHAPTER IV.—Of the Frame of the Suit, except section 42 and section 44, rule *a*.

CHAPTER V.—Of the Institution of Suits.

CHAPTER VI.—Of the Issue and Service of Summons, except section 77.

CHAPTER VII.—Of the Appearance of the Parties and Consequence of Non-appearance.

CHAPTER VIII.—Of written Statements and Set-off.

CHAPTER IX.—Of the Examination of the Parties by the Court, except section 119.

CHAPTER X.—Of Discovery and the Admission, etc., of Documents

CHAPTER XII.—Section 155, first paragraph, Judgment where either party fails to produce his evidence.

CHAPTER XIII.—Of Adjournments.

CHAPTER XIV.—Of the Summoning and Attendance of Witnesses.

CHAPTER XV.—Of the Hearing of the suit and Examination of Witnesses, except sections 182 to 188 (both inclusive)

CHAPTER XVI.—Of Affidavits.

<sup>1</sup> The second schedule as it now stands was substituted for the original schedule by s 1 of the Presidency Small Cause Courts Law Amendment Act, 1888 (X of 1888), printed, General Acts, Vol V, Ed 1898, p 251

The procedure prescribed in the second schedule is to be applicable to suits and proceedings under the Provincial Small Cause Courts Act, 1887 (IX of 1887), see s 17 of the Act, printed, General Acts, Vol V, Ed 1898, p 123

THE SECOND SCHEDULE—*continued*.

CHAPTER	XVII.—Of Judgment and Decree, except sections 204, 207, 211, 212, 213, 214 and 215.
CHAPTER	XVIII.—Of costs, sections 220, 221 and 222.
CHAPTER	XIX.—Of the Execution of Decrees, sections 223 to 236 (both inclusive), 239 to 258 (both inclusive), 259 (except so far as relates to the recovery of wives), 266 (except so far as relates to immoveable property), 267 to 272 (both inclusive), 273 (so far as relates to decrees for moveable property), 275 to 283 (both inclusive), 284 (so far as relates to moveable property), 285, 286, 287, 288, 289, 290 (so far as relates to moveable property), 291, 292, 293 (so far as relates to re-sales under 297), 294 to 303 (both inclusive), 328 to 333 (both inclusive, so far as relates to moveable property), 336 to 343 (both inclusive).
CHAPTER	XX.—Section 360, Power to invest certain Courts with Insolvency-jurisdiction.
CHAPTER	XXI.—Of the Death, Marriage and Insolvency of Parties.
CHAPTER	XXII.—Of the Withdrawal and Adjustment of Suits.
CHAPTER	XXIII.—Of Payment into Court.
CHAPTER	XXIV.—Of requiring Security for Costs.
CHAPTER	XXV.—Of Commissions, except section 396.
CHAPTER	XXVI.—Suits by Paupers.
CHAPTER	XXVII.—Suits by and against Government or Government Servants.
CHAPTER	XXVIII.—Suits by Aliens and by and against Foreign and Native Rulers.
CHAPTER	XXIX.—Suits by and against Corporations and Companies.
CHAPTER	XXX.—Suits by and against Trustees, Executors and Administrators.
CHAPTER	XXXI.—Suits by and against Minors and Persons of unsound Mind.
CHAPTER	XXXII.—Suits by and against Military men.
CHAPTER	XXXIII.—Interpleader.

*(The Second, Third and Fourth Schedules)*THE SECOND SCHEDULE—*continued.*

- CHAPTER XXXIV.—Of Arrest and Attachment before Judgment,  
except as regards Immoveable Property.
- CHAPTER XXXVI.—Appointment of Receivers
- CHAPTER XXXVII.—Reference to Arbitration.
- CHAPTER XXXVIII.—Of Proceedings on Agreement of Parties
- CHAPTER XLVI.—Reference to and revision by High Court
- CHAPTER XLVII.—Of Review of Judgment, sections 623, 626 and  
630
- CHAPTER XLIX.—Miscellaneous

## THE THIRD SCHEDULE

*(See section 7)**Bombay Enactments*

- Bombay Regulation XXIX, 1827
- „ „ VII, 1830.
- „ „ I, 1831
- „ „ XVI, 1831.
- Act XIX of 1835.
- „ XIII of 1842.<sup>1</sup>

## THE FOURTH SCHEDULE.

*(See section 644.)*

## FORMS OF PLEADINGS AND DECREES.

## A.—PLAINTS. PART I.

## No. 1.

## FOR MONEY LENT.

IN THE COURT OF \_\_\_\_\_, AT  
*Civil Suit No.* .  
*A. B.* of  
*against*  
*C. D.* of

<sup>1</sup> Act XIII of 1842 (collection of Inamdar's Revenues) is repealed in the Presidency of Bombay, excluding the Scheduled Districts, *see* the Bombay Land-Revenue Code (Bombay Act V of 1879), Schedule A, and s 1, printed, Bombay Code Vol II, Ed 1896, p 303

## (The Fourth Schedule.)

THE FOURTH SCHEDULE—*continued.*

A. B., the above-named plaintiff, states as follows:—

1. That on the                      day of                      18                      ,  
he lent the defendant                      rupees repayable on demand [or on the  
day of                      ].

2. That the defendant has not paid the same, except                      rupees  
paid on the                      day of                      18                      .

[If the plaintiff claims exemption from any law of limitation, say:—]

3. The plaintiff was a minor [or insane] from the                      day of  
till the                      day of                      .

4. The plaintiff prays judgment for                      rupees, with interest  
at                      per cent. from the                      day of                      18                      .

[NOTE—The object of stating when the debt is to be repaid is merely to fix a date for  
interest. If, therefore, interest is not claimed the statement may be omitted.]

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No. 2.

## FOR MONEY RECEIVED TO PLAINTIFF'S USE.

(Title.)

A. B. and G. H., the above-named plaintiffs, state as follows:—

1. That on the                      day of                      18                      , at                      ,  
the defendant received                      rupees [or a cheque on the  
Bank for                      rupees] from one E. F. for the use of the plaintiffs.

2. That the defendant has not paid [or delivered] the same accordingly.

3. The plaintiffs pray judgment for                      rupees, with interest  
at                      per cent. from the                      day of                      18                      .

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No. 3.

## FOR PRICE OF GOODS SOLD BY A FACTOR.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the                      day of                      18                      , at                      ,  
he and E. F., since deceased, delivered to the defendant [one thousand bar-  
rels of flour, five hundred maunds of rice, or as the case may be] for sale  
upon commission.

2. That on the                      day of                      18                      , [or, on some  
day unknown to the plaintiff, before the                      day of  
18                      ], the defendant sold the said merchandise for                      rupees.

3. That the commission and expenses of the defendant thereon amount  
to                      rupees.

THE FOURTH SCHEDULE—*continued.*

4. That on the                      day of                      18     , the plaintiff demanded from the defendant the proceeds of the said merchandise.

5. That he has not paid the same.

[*Demand of judgment.*]

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No. 4.

FOR MONEY RECEIVED BY DEFENDANT THROUGH THE PLAINTIFF'S MISTAKE  
OF FACT.

(*Title*)

*A. B*, the above-named plaintiff, states as follows:—

1. That on the                      day of                      18     , at                      , the plaintiff agreed to buy and the defendant agreed to sell                      bars of silver at                      annas per tola of fine silver.

2. That the plaintiff procured the said bars, to be assayed by one *E. F.*, who was paid by the defendant for such assay, and that the said *E. F.* declared each of the said bars to contain 1,500 tolas of fine silver, and that the plaintiff accordingly paid the defendant                      Rs.                      annas therefor.

3. That each of the said bars did contain only 1,200 tolas of fine silver.

4. That the defendant has not repaid the sum so overpaid.

[*Demand of judgment.*]

[NOTE.—A demand of re-payment is not necessary, but it may affect the question of interest or the costs.]

---

No. 5.

FOR MONEY PAID TO A THIRD PARTY AT THE DEFENDANT'S REQUEST.

(*Title.*)

*A. B*, the above-named plaintiff, states as follows:—

1. That on the                      day of                      18     , at                      , at the request [*or by the authority*] of the defendant, the plaintiff paid to one *E. F.*                      rupees.

2. That, in consideration thereof, the defendant promised [*or became bound*] to pay the same to the plaintiff on demand [*or as the case may be*].

THE FOURTH SCHEDULE—*continued.*

3. That [on the                      day of                      18                      , the plaintiff demanded payment of the same from the defendant, but] he has not paid the same.

[*Demand of judgment.*]

[NOTE.—If the request or authority is implied, the plaint should state facts raising the implication ]

## No. 6.

FOR GOODS SOLD AT A FIXED PRICE AND DELIVERED.

(*Title*)

A. B., the above-named plaintiff, states as follows:—

1. That on the                      day of                      18                      , at E. F., of                      , deceased, sold and delivered to the defendant [one hundred barrels of flour, *or*, the goods mentioned in the schedule hereto annexed, *or*, sundry goods].

2. That the defendant promised to pay                      rupees for the said goods on delivery [*or*, on the                      day of                      *some day before the plaint was filed*].

3. That he was not paid the same.

4. That the said E. F., in his lifetime made his will, whereby he appointed the plaintiff executor thereof.

5. That on the                      day of                      18                      the said E. F. died.

6. That on the                      day of                      probate of the said will was granted to the plaintiff by the Court of                      .

7. The plaintiff as executor as aforesaid [*Demand of judgment*]

[NOTE.—If a day was fixed for payment it should be stated as furnishing a date for the commencement of interest ]

## No. 7.

GOODS SOLD AT A REASONABLE PRICE AND DELIVERED.

(*Title*)

A. B., the above-named plaintiff, states as follows:—

1. That on the                      day of                      18                      , at                      , plaintiff sold and delivered to the defendant [sundry articles of house-furniture] but no express agreement was made as to the price.

THE FOURTH SCHEDULE—*continued*

2. That the same were reasonably worth                      rupees.
3. That the defendant has not paid the same

[*Demand of judgment*]

[NOTE.—The law implies a promise to pay so much as the goods are reasonably worth]

## No. 8.

FOR GOODS DELIVERED TO A THIRD PARTY AT DEFENDANT'S REQUEST AT A  
FIXED PRICE.

(Title)

A B, the above-named plaintiff, states as follows:—

1. That on the                      day of                      18                      , at                      ,  
plaintiff sold to the defendant [one hundred barrels of flour] and, at the  
request of the defendant, delivered the same to one E. F.
2. That the defendant promised to pay to the plaintiff                      rupees  
therefor.
3. That he has not paid the same.

[*Demand of judgment.*]

## No. 9

FOR NECESSARIES FURNISHED TO THE FAMILY OF DEFENDANT'S TESTATOR  
WITHOUT HIS EXPRESS REQUEST, AT A REASONABLE PRICE.

(Title.)

A. B, the above-named plaintiff, states as follows:—

1. That on the                      day of                      18                      , at                      ,  
plaintiff furnished to [Mary Jones] the wife of [James Jones], deceased,  
at her request, sundry articles of [food and clothing], but no express agree-  
ment was made as to the price.
2. That the same were necessary for her.
3. That the same were reasonably worth                      rupees.
4. That the said James Jones refused to pay the same.
5. That the defendant is the executor of the last will of the said James  
Jones.

[*Demand of judgment*]

THE FOURTH SCHEDULE—*continued*.

## No 10.

## FOR GOODS SOLD AT A FIXED PRICE.

## (Title)

A B, the above-named plaintiff, states as follows:—

1. That on the                      day of                      18                      , at                      ,  
the plaintiff sold to E. F. of                      , deceased, [*all the crops then  
growing on his farm in*                      ]

2 That the said E. F. promised to pay the plaintiff                      rupees  
for the same.

3. That he did not pay the same

4 That the defendant is administrator of the estate of the said E. F.

[*Demand of judgment*]

## No. 11.

## FOR GOODS SOLD AT A REASONABLE PRICE.

## (Title)

A. B., the above-named plaintiff, states as follows:—

1. That on the                      day of                      18                      , at                      ,  
E. F., of                      , sold to the defendant [*all the fruit growing on his  
orchard in*                      ], but no express agreement was made as to the  
price.

2. That the same was reasonably worth                      rupees

3 That the defendant has not paid the same

4. That on the                      day of                      the High Court of  
Judicature at Fort William duly adjudged the said E F to be a lunatic  
and appointed the plaintiff committe of his estate, with the usual powers  
for the management thereof.

5 The plaintiff as committee as aforesaid. [*Demand of judgment*]

[NOTE —When the lunatic's estate is not subject to the ordinary original jurisdiction of  
a High Court, for paragraphs 4 and 5 substitute the following —]

4. That on the                      day of                      the Civil Court of  
duly adjudged the said E F to be of unsound mind and  
incapable of managing his affairs, and appointed the plaintiff Manager of  
his estate.

5. The plaintiff as Manager as aforesaid. [*Demand of judgment.*]

THE FOURTH SCHEDULE—*continued.*

## No. 12.

FOR GOODS MADE AT DEFENDANT'S REQUEST, AND NOT ACCEPTED.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the                      day of                      18                      , at                      ,  
*E. F.*, of                      , agreed with the plaintiff that the plaintiff should make for him [*six tables and fifty chairs*], and that the said *E. F.* should pay for the same upon the delivery thereof                      rupees.
2. That the plaintiff made the said goods, and on the                      day of                      18                      , offered to deliver the same to the said *E. F.*, and has ever since been ready and willing so to do
3. That the said *E. F.* has not accepted the said goods or paid for the same.
4. That on the                      day of                      18                      , the High Court of Judicature at Fort William duly adjudged the said *E. F.* to be a lunatic, and appointed the defendant committee of his estate.
5. The plaintiff prays judgment for                      rupees with interest from the                      day of                      , at the rate of                      per cent. per annum, to be paid out of the estate of the said *E. F.* in the hands of the defendant.

## No. 13.

FOR DEFICIENCY UPON A RE-SALE [GOODS SOLD AT AUCTION].

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the                      day of                      18                      , at                      , plaintiff put up at auction sundry [*articles of merchandise*], subject to the condition that all goods not paid for and removed by the purchaser thereof within [*ten days*] after the sale should be re-sold by auction on his account, of which condition the defendant had notice.
2. That the defendant purchased [*one crate of crockery*] at the said auction at the price of                      rupees.
3. That the plaintiff was ready and willing to deliver the same to the defendant on the said day and for [*ten days*] thereafter, of which the defendant had notice.
4. That the defendant did not take away the said goods purchased by him, nor pay therefor, within [*ten days*] after the sale, nor afterwards.

THE FOURTH SCHEDULE—*continued.*

5. That on the                      day of                      18                      , at                      ,  
the plaintiff re-sold the said [*crate of crockery*], on account of the defendant,  
by public auction, for                      rupees.

6 That the expenses attendant upon such re-sale amounted to  
rupees

7 That the defendant has not paid the deficiency thus arising, amount-  
ing to                      rupees.

[*Demand of judgment*]

[NOTE to s 4—Unless the seller agreed to deliver, the purchaser must fetch the goods;  
*see* Act IX of 1872<sup>1</sup>, s 93]

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No. 14

## FOR THE PURCHASE-MONEY OF LANDS CONVEYED

(*Title*)

*A B*, the above-named plaintiff, states as follows:—

1 That on the                      day of                      18                      , at                      ,  
the plaintiff sold [and conveyed] to the defendant [the house and com-  
pound No.                      , in the city of                      *or*, a farm known as  
                    , in                      *or*, a piece of land lying, etc.]

2 That the defendant promised to pay the plaintiff                      rupees  
for the said [house and compound, *or* farm, *or* land].

3. That he has not paid the same.

[*Demand of judgment*]

[NOTE—Where there has been no actual conveyance, say, in s 1, “sold to the defend-  
ant the house, etc, and placed him in possession of the same”]

---

No. 15.

FOR THE PURCHASE-MONEY OF IMMOVEABLE PROPERTY CONTRACTED TO BE  
SOLD, BUT NOT CONVEYED.

(*Title*)

*A B*, the above-named plaintiff, states as follows:—

1 That on the                      day of                      18                      , at                      ,  
the plaintiff and defendant mutually agreed that the plaintiff should sell  
to the defendant, and that the defendant should purchase from the plaintiff  
[the house No                      , in the town of                      , *or* one hundred bighás

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<sup>1</sup> Printed, General Acts, Vol II, Ed 1898, p 331

THE FOURTH SCHEDULE—*continued.*

of land in \_\_\_\_\_, bounded by the East Indian railroad, and by other lands of the plaintiff] for \_\_\_\_\_ rupees.

2. That on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, at \_\_\_\_\_, the plaintiff tendered [*or*, was ready and willing, and offered to execute] a sufficient instrument of conveyance of the said property to the defendant, on payment of the said sum, and still is ready and willing to execute the same.

3. That the defendant has not paid the said sum.

[*Demand of judgment.*]

---

No. 16.

FOR SERVICES AT A FIXED PRICE.

(*Title*)

A. B., the above-named plaintiff, states as follows:—

1. That on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, at \_\_\_\_\_, the defendant [hired plaintiff as a clerk, at the salary of \_\_\_\_\_ rupees per year].

2. That from the [said day] until the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, the plaintiff served the defendant as his [clerk].

3. That the defendant has not paid the said salary.

[*Demand of judgment.*]

---

No. 17.

FOR SERVICES AT REASONABLE PRICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That between the day \_\_\_\_\_ of \_\_\_\_\_ 18\_\_\_\_, and the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, at \_\_\_\_\_, plaintiff [executed sundry drawings, designs and diagrams] for the defendant, at his request; but no express agreement was made as to the sum to be paid for such services.

2. That the said services were reasonably worth \_\_\_\_\_ rupees.

3. That the defendant has not paid the same.

[*Demand of judgment*]

THE FOURTH SCHEDULE—*continued.*

No. 18.

FOR SERVICES AND MATERIALS AT A FIXED PRICE.

(Title)

A B, the above-named plaintiff, states as follows :—

1 That on the                      day of                      18                      , at                      ,  
 plaintiff [furnished the paper for and printed one thousand copies of a  
 book called                      ] for the defendant, at his request [and delivered  
 the same to him].

2 That the defendant promised to pay                      rupees therefor.

3. That he has not paid the same.

[Demand of judgment]

No. 19

FOR SERVICES AND MATERIALS AT A REASONABLE PRICE

(Title)

A. B, the above-named plaintiff, states as follows :—

1. That on the                      day of                      18                      , at                      ,  
 plaintiff built a house [known as No.                      , in                      ], and fur-  
 nished the materials therefor, for the defendant, at his request, but no  
 express agreement was made as to the price to be paid for such work and  
 materials.

2. That the said work and materials were reasonably worth  
 rupees

3 That the defendant has not paid the same.

[Demand of judgment]

No. 20.

FOR RENT RESERVED IN A LEASE.

(Title)

A. B, the above-named plaintiff, states as follows :—

1. That on the                      day of                      18                      , at                      ,  
 the defendant entered into a contract with the plaintiff, under their hands,  
 a copy of which is hereto annexed.

[Or state the substance of the contract.]

THE FOURTH SCHEDULE—*continued.*

2. That the defendant has not paid the rent of the [month] ending on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, amounting to \_\_\_\_\_ rupees.

[*Demand of judgment.*]

*Another form.*

1. That the plaintiff let to the defendant a house, No. 27, Chowringhee, for seven years to hold from the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, at \_\_\_\_\_ rupees a year, payable quarterly.

2. That of such rent \_\_\_\_\_ quarters are due and unpaid.

[*Demand of judgment*]

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No. 21.

## FOR USE AND OCCUPATION AT A FIXED RENT.

(*Title.*)

A. B, the above-named plaintiff, states as follows:—

1. That on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, at \_\_\_\_\_, the defendant hired from the plaintiff [the house No. \_\_\_\_\_, street], at the rent of \_\_\_\_\_ rupees, payable \_\_\_\_\_ on the first day of \_\_\_\_\_.

2 That the defendant occupied the said premises from the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, to the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.

3. That the defendant has not paid \_\_\_\_\_ rupees, being the part of said rent due on the first day of \_\_\_\_\_ 18\_\_\_\_.

[*Demand of judgment*]

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No. 22.

## FOR USE AND OCCUPATION AT A REASONABLE RENT.

(*Title*)

A B., the above-named plaintiff, executor of the will of X. Y, deceased, states as follows:—

1 That the defendant occupied the [house No. \_\_\_\_\_, street], by permission of the said X Y, from the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, until the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, and no agreement was made as to payment for the use of the said premises

THE FOURTH SCHEDULE—*continued.*

- 2 That the use of the said premises for the said period was reasonably worth                      rupees
- 3 That the defendant has not paid the same.
4. The plaintiff as such executor as aforesaid prays judgment for rupees.

---

No. 23.

FOR BOARD AND LODGING.

(*Title*)

A. B., the above-named plaintiff, states as follows:—

1. That from the                      day of                      18                      , until the day of                      18                      , the defendant occupied certain rooms in the house [No.                      ,                      street], by permission of the plaintiff, and was furnished by the plaintiff, at his request, with meat, drink, attendance, and other necessaries.

2. That, in consideration thereof, the defendant promised to pay [or, that no agreement was made] as to payment for such meat, drink, attendance or necessaries, but the same were reasonably worth the sum of                      rupees.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

---

No. 24.

FOR FREIGHT OF GOODS

(*Title*)

A. B., the above-named plaintiff, states as follows:—

1. That on the                      day of                      18                      , at                      , plaintiff transported in his barge [or otherwise] [one thousand barrels of flour or sundry goods], from                      to                      , at the request of the defendant.

2. That the defendant promised to pay the plaintiff the sum of [one rupee per barrel] as freight thereon [or, that no agreement was made as to payment for such transportation, but such transportation was reasonably worth                      rupees].

3. That the defendant has not paid the same.

[*Demand of judgment.*]

THE FOURTH SCHEDULE—continued.

No. 25.

FOR PASSAGE-MONEY.

(Title.)

'A. B, the above-named plaintiff, states as follows:—

1. That on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, plaintiff conveyed the defendant [in his ship, called the \_\_\_\_\_], from \_\_\_\_\_ to \_\_\_\_\_ at his request.
2. That the defendant promised to pay the plaintiff \_\_\_\_\_ rupees therefor [or, that no agreement was made as to the price of the said passage, but the said passage was reasonably worth \_\_\_\_\_ rupees.
3. That the defendant has not paid the same.

[Demand of judgment]

No. 26.

ON AN AWARD.

(Title.)

A B., the above-named plaintiff, states as follows:—

1. That on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, at \_\_\_\_\_, the plaintiff and defendant, having a controversy between them concerning [a demand of the plaintiff for the price of ten barrels of oil, which the defendant refused to pay], agreed to submit the same to the award of *E. F.* and *G. H.*, as arbitrators [*or*, entered into an agreement, a copy of which is hereto annexed].
2. That on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, at \_\_\_\_\_, the said arbitrators awarded that the defendant should [pay the plaintiff \_\_\_\_\_ rupees].
- 3 That the defendant has not paid the same.

[Demand of judgment.]

[NOTE—This will apply where the agreement to refer is not filed in Court.]

No 27.

## ON A FOREIGN JUDGMENT.

(Title)

A B, the above-named plaintiff, states as follows:—

1. That on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, at \_\_\_\_\_  
in the State [or Kingdom] of \_\_\_\_\_, the \_\_\_\_\_

THE FOURTH SCHEDULE—*continued.*

Court of that State [*or Kingdom*], in a suit therein pending between the plaintiff and the defendant, duly adjudged that the defendant should pay, to the plaintiff                      rupees, with interest from the said date.

2. That the defendant has not paid the same.

[*Demand of judgment.*]

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PLAINTS UPON INSTRUMENTS FOR THE PAYMENT OF MONEY ONLY.

No. 28.

ON AN ANNUITY BOND.

(*Title*)

A. B., the above-named plaintiff, states as follows:—

1. That on the                      day of                      18                      , at                      , the defendant by his bond became bound to the plaintiff in the sum of                      rupees to be paid by the defendant to the plaintiff, subject to a condition that if the defendant should pay to the plaintiff                      rupees half-yearly on the                      day of                      and the                      day of                      in every year during the life of the plaintiff, the said bond should be void.

2. That afterwards, on the                      day of                      18                      , the sum of                      rupees for                      of the said half-yearly payments of the said annuity, became due to the plaintiff and is still unpaid.

[*Demand of judgment.*]

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No. 29.

PAYEE AGAINST MAKER.

(*Title*)

A. B., the above-named plaintiff, states as follows:—

1 That on the                      day of                      18                      , at                      , the defendant, by his promissory note, now overdue, promised to pay to the plaintiff                      rupees                      [days] after date.

2. That he has not paid the same [except                      rupees, paid on the                      day of                      18                      ].

[*Demand of judgment*]

[NOTE—Where the note is payable after notice, for paragraphs 1 and 2 substitute—]

THE FOURTH SCHEDULE—*continued.*

1 That on the                      day of                      18                      , at                      ,  
the defendant, by his promissory note, promised to pay to the plaintiff  
rupees                      months after notice.

2. That notice was afterwards given by the plaintiff to the defendant to  
pay the same                      months after the said notice.

3 That the said time for payment has elapsed, but the defendant has  
not paid the same.

[Where the note is payable at a particular place, say—]

1. That on the                      day of                      18                      , at                      ,  
the defendant, by his promissory note, now overdue, promised to pay to  
the plaintiff [at Messrs. A. & Co.'s, Madras]                      rupees  
months after date.

2 That the said note was duly presented for payment [at Messrs.  
A. & Co.'s] aforesaid, but has not been paid.

*Written Statement of the Defendant.*

IN THE COURT, ETC.

C D, the above-named defendant, states as follows:—

The defendant made the note sued upon under the following circumstances:—The plaintiff and defendant had for some years been in partnership as indigo manufacturers, and it had been agreed between them that they should dissolve partnership, that the plaintiff should retire from the business, and that the defendant should take over the whole of the partnership-assets and liabilities and should pay the plaintiff the value of his share in the assets after deducting the liabilities.

2 The plaintiff thereupon undertook to examine the partnership-books and inquire into the state of the partnership-assets and liabilities, and he did accordingly examine the said books and make the said inquiries, and he thereupon represented to the defendant that the assets of the firm exceeded Rs 1,00,000 and that the liabilities of the firm were less than Rs 30,000, whereas the fact was that the assets of the firm were less than Rs. 50,000 and the liabilities of the firm largely exceeded the assets.

3 The misrepresentations mentioned in the second paragraph of this statement induced the defendant to make the note now sued on, and there never was any other consideration for the making of such note.

THE FOURTH SCHEDULE—*continued.*

No. 30.

FIRST INDORSEE AGAINST MAKER.

(*Title*)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the                      day of                      18                      , at                      ,  
the defendant, by his promissory note, now overdue, promised to pay to the  
order of *E. F.* [*or to E. F. or order*] rupees                      [                      days after date].
2. That the said *E. F.* indorsed the same to the plaintiff.
3. That the defendant has not paid the same

[*Demand of judgment*]

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No. 31.

SUBSEQUENT INDORSEE AGAINST MAKER.

(*Title*)

*A. B.*, the above-named plaintiff, states as follows:—

1. [*As in the last preceding form*]
2. That the same was, by the indorsement of the said *E. F.* and of  
*G. H.* and *I. J.* [*or and others*] transferred to the plaintiff.
3. That the defendant has not paid the same

[*Demand of judgment.*]

---

No 32.

FIRST INDORSEE AGAINST FIRST INDORSEER.

(*Title*)

*A. B.*, the above-named plaintiff, states as follows:—

1. That *E. F.*, on the                      day of                      18                      , at                      ,  
by his promissory note, now overdue, promised to pay to the defendant or  
order                      rupees                      months after date
2. That the defendant indorsed the same to the plaintiff.
3. That on the                      day of                      18                      , the same was  
duly presented for payment, but was not paid.

[*Or state facts excusing want of presentment*]

- 4 That the defendant had notice thereof.
5. That he has not paid the same.

[*Demand of judgment*]

THE FOURTH SCHEDULE—*continued.*

No. 33.

SUBSEQUENT INDORSEE AGAINST FIRST INDORSER ; THE INDORSEMENT BEING  
SPECIAL.

(Title)

A. B, the above-named plaintiff, states as follows :—

1 That the defendant indorsed to one E. F. a promissory note, now overdue, made [*or* purporting to have been made] by one G. H, on the day of 18 , at , to the order of the defendant, for the sum of rupees [payable days after date].

2 That the same was, by the indorsement of the said E. F. [and others], transferred to the plaintiff [*or*, that the said E. F. indorsed the same to the plaintiff]

3, 4, and 5. [*Same as 3, 4, and 5 of the last preceding form*]

[Demand of judgment.]

No. 34.

SUBSEQUENT INDORSEE AGAINST HIS IMMEDIATE INDORSER.

(Title)

A B, the above-named plaintiff, states as follows :—

1. That the defendant indorsed to him a promissory note, now overdue, made [*or* purporting to have been made] by one E F, on the day of 18 , at , to the order of one G. H., for the sum of rupees [payable days after date], and endorsed by the said G. H. to the defendant.

2, 3, and 4. [*Same as in 3, 4, and 5 in Form No. 33.*]

[Demand of judgment.]

No. 35.

SUBSEQUENT INDORSEE AGAINST INTERMEDIATE INDORSER.

(Title)

A. B, the above-named plaintiff, states as follows :—

1. That a promissory note, now overdue, made [*or* purporting to have been made] by one E. F., on the day of 18 , at , to the order of one G. H, for the sum of rupees

2, 3, and 4. [*As in No. 33*]

No. 36.

Civil Suit No .

*against*

 $C \ D$  of $E$   $F$  of

and

'G H. of

1. That on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, at \_\_\_\_\_, the defendant, *C. D.*, by his promissory note, now overdue, promised to pay to the order of the defendant, *E. F.*, \_\_\_\_\_ rupees [\_\_\_\_\_ months after date].

2. That the said *E. F.* indorsed the same to the defendant, *G. H.*, who indorsed it to the plaintiff.

3. That on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, the same was presented [*or state facts excusing want of presentment*] to the said C. D. for payment, but was not paid.

4. That the said *E. F.* and *G. H.* had notice thereof

5. That they have not paid the same.

[Demand of judgment.]

No. 37.

### DRAWER AGAINST ACCEPTOR.

(Title)

A B., the above-named plaintiff, states as follows:—

1. That on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, at \_\_\_\_\_, by his bill of exchange, now overdue, the plaintiff required the defendant to pay to him \_\_\_\_\_ rupees [ \_\_\_\_\_ days after date, or sight, thereof].

THE FOURTH SCHEDULE—*continued.*

2. That the defendant accepted the said bill. [*If the bill is payable at a certain time after sight, the date of acceptance should be stated; otherwise it is not necessary.*]

3. That he has not paid the same.

4. That by reason thereof the plaintiff incurred expenses in and about the presenting and noting of the bill, and incidental to the dishonour thereof.

[*Demand of judgment.*]

[NOTE—Where the bill is payable to a third party, for paragraphs 1, 2, 3, say—]

1. That on, etc, at, etc., by his bill of exchange, now overdue, directed to the defendant, the plaintiff required the defendant to pay to  
*E. F.* or order                      rupees                      months after date.
2. That the plaintiff delivered the said bill to the said *E. F.* on .
3. That the defendant accepted the said bill, but did not pay the same whereupon the same was returned to the plaintiff.

---

No. 38.

## PAYEE AGAINST ACCEPTOR.

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the                      day of                      18     , the defendant accepted a bill of exchange, now overdue, made [*or purporting to have been made*] by one *E. F.*, on the                      day of                      18     , at                      , requiring the defendant to pay to the plaintiff  
 rupees                      after sight thereof.
2. That he has not paid the same.

[*Demand of judgment.*]

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No. 39.

## FIRST INDORSEE AGAINST ACCEPTOR.

(*Title*)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the                      day of                      18     , the defendant accepted a bill of exchange, now overdue, made [*or purporting to have been made*] by one *E. F.*, on the                      day of                      18     , at

THE FOURTH SCHEDULE—*continued.*

, requiring the defendant to pay to the order of one *G. H.*  
rupees                      after sight thereof.

2. That the said *G. H.* indorsed the same to the plaintiff.

3. That the defendant has not paid the same.

[*Demand of judgment*]

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No. 40.

SUBSEQUENT INDORSEE AGAINST ACCEPTOR.

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows:—

1. [*As in the last preceding form to the end of Article 1.*]

2. That by the endorsement of the said *G. H.* [and others], the same  
was transferred to the plaintiff.

3. That the defendant has not paid the same.

[*Demand of judgment*]

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No. 41.

PAYEE AGAINST DRAWER FOR NON-ACCEPTANCE.

(*Title*)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the                      day of                      18                      , at                      ,  
the defendant, by his bill of exchange, directed to *E. F.*, required the said  
*E. F.* to pay to the plaintiff                      rupees [                      days after sight ]

2. That on the                      day of                      18                      , the same was  
duly presented to the said *E. F.* for acceptance, and was dishonoured.

3. That the defendant had due notice thereof.

4. That he has not paid the same.

[*Demand of judgment*]

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No. 42.

FIRST INDORSEE AGAINST FIRST INDORSER.

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows:—

1. That the defendant indorsed to the plaintiff a bill of exchange, now  
overdue, made [*or purporting to have been made*] by one *E. F.*, on the  
day of                      18                      , at                      , requiring one *G. H.*

THE FOURTH SCHEDULE—*continued.*

to pay to the order of the defendant                      rupees [                  days]  
after sight [*or* after date, *or* at sight] thereof [and accepted by the said  
*G H.* on the                      day of                      18        ].

2 That on the                      day of                      18     , the same  
was presented to the said G. H. for payment, and was dishonoured.

3 That the defendant had due notice thereof.

4. That he has not paid the same.

[Demand of judgment]

No. 43.

SUBSEQUENT INDORSEE AGAINST FIRST INDORSER; THE INDORSEMENT BEING SPECIAL.

(Title)

A. B., the above-named plaintiff, states as follows:—

1. That the defendant indorsed to one *E F* a bill of exchange, now overdue, made [or purporting to have been made] by one *G. H*, on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, at \_\_\_\_\_, requiring one *I. J* to pay to the order of the defendant \_\_\_\_\_ rupees \_\_\_\_\_ days after sight thereof [or otherwise], and accepted by the said *I. J.* on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_. [*This clause may be omitted if not according to the fact*]

2. That the same was, by the indorsement of the said *E. F.* [and others], transferred to the plaintiff.

3. That on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, the same was presented to the said *I. J.* for payment, and was dishonoured.

4. That the defendant had due notice thereof.

5. That he has not paid the same

[Demand of judgment]

No. 44.

### SUBSEQUENT INDORSEE AGAINST HIS IMMEDIATE INDORSER.

(Title)

A. B, the above-named plaintiff, states as follows:—

1. That the defendant indorsed to plaintiff a bill of exchange, now overdue, made [*or purporting to have been made*] by one *E. F.*, on the day of 18, at, requiring one *G. H.* to pay to the order of *I. J.* rupees days after sight thereof [*or*

THE FOURTH SCHEDULE—*continued.*

*otherwise*], [accepted by the said *G. H.*] and indorsed by the said *I. J.* to the defendant.

2 That on the                      day of                      18     , the same was presented to the said *G. H.* for payment, and was dishonoured.

3. That the defendant had due notice thereof.

4. That he has not paid the same.

[*Demand of judgment.*]

No. 45.

## SUBSEQUENT INDORSEE AGAINST INTERMEDIATE INDORSER.

(*Title*)

*A. B.*, the above-named plaintiff, states as follows:—

1. That a bill of exchange, now overdue, made [*or purporting to have been made*] by one *E. F.*, on the                      day of                      18     , at                      , requiring one *G. H.* to pay to the order of one *I. J.* rupees                      days after sight thereof [*or otherwise*], [accepted by the said *G. H.*] and indorsed by the said *I. J.* to the defendant, was, by the indorsement of the defendant [and others], transferred to the plaintiff.

2. That on the                      day of                      18     , the same was presented to the said *G. H.* for payment, and was dishonoured.

3. That the defendant had due notice thereof.

4. That he has not paid the same.

[*Demand of judgment.*]

No. 46.

## INDORSEE AGAINST DRAWER, ACCEPTOR AND INDORSER.

IN THE COURT OF                      , AT

*Civil Suit No.*                      .

*A. B.* of

*against*

*C. D.* of

*E. F.* of

and

*G. H.* of

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the                      day of                      18     , at                      the defendant, *C. D.*, by his bill of exchange, now overdue, directed to the

THE FOURTH SCHEDULE—*continued*.

defendant *E. F.*, required the said *E. F.* to pay to the order of the defendant *G. H.* rupees [                      days after sight thereof].

2. That on the                      day of                      18     , the said *E. F.* accepted the same.

3 That the said *G. H.* indorsed the same to the plaintiff

4. That on the                      day of                      18     , the same was presented to the said *E. F.* for payment, and was dishonoured.

5. That the other defendants had due notice thereof.

6. That they have not paid the same.

[*Demand of judgment*]

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No. 47.

## PAYEE AGAINST DRAWER FOR NON-ACCEPTANCE OF A FOREIGN BILL.

(*Title*.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the                      day of                      18     , at                      , the defendant by his bill of exchange, drawn in Calcutta, required one *E. F.* to pay to the plaintiff in [London]                      pounds sterling, [sixty days] after sight thereof.

2. That on the                      day of                      18     , the same was presented to the said *E. F.* for acceptance, and was dishonoured, and was thereupon duly protested.

3 That the defendant had due notice thereof.

4. That he has not paid the same.

5. That the value of                      pounds sterling, at the time of the service of notice or protest on the defendant, was                      rupees     annas.

Wherefore the plaintiff demands judgment against the defendant for                      rupees, with [ten per centum] compensation and interest from the                      day of                      18     .

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No. 48.

## PAYEE AGAINST ACCEPTOR.

(*Title*.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the                      day of                      18     , at                      , one *E. F.*, by his bill of exchange, now overdue, directed to the defendant,

THE FOURTH SCHEDULE—*continued.*

required the defendant to pay to the plaintiff                      rupees after date  
[*or*                      days after sight] thereof

2. That on the                      day of                      18                      , the defendant  
accepted the said bill.

3. That he has not paid the same

[Demand of judgment]

No 49.

ON A MARINE [OPEN] POLICY, ON VESSEL LOST BY PERILS OF THE  
SEA, ETC.

(*Title*)

A. B., the above-named plaintiff, states as follows: —

1. The plaintiff was the owner of [*or* had an interest in] the ship  
at the time of her loss, as hereinafter mentioned.

2 That on the                      day of                      18                      , at                      ,  
the defendants in consideration of                      rupees to them paid [*or* which  
the plaintiff then promised to pay] executed to him a policy of insurance  
upon the said ship, a copy of which is hereto annexed [*or*, whereby they  
promised to pay to the plaintiff, within                      days after proof of loss  
and interest, all loss and damage accruing to him by reason of the destruc-  
tion or injury of the said ship, during her next voyage from  
to                      , whether by perils of the sea or by fire, or by other causes  
therein mentioned, not exceeding                      rupees].

3. That the said ship, while proceeding on the voyage mentioned in the  
said policy, was on the                      day of                      18                      , totally lost  
by the perils of the sea [*or otherwise*]

4. That the plaintiff's loss thereby was                      rupees

5. That on the                      day of                      18                      he furnished the  
defendants with proof of his loss and interest, and otherwise duly performed  
all the conditions of the said policy on his part.

6. That the defendants have not paid the said loss.

[Demand of judgment]

No. 50.

ON CARGO, LOST BY FIRE:—VALUED POLICY.

(*Title.*)

A B., the above-named plaintiff, states as follows:—

1. That plaintiff was the owner of [*or* had an interest in] [one hundred

THE FOURTH SCHEDULE—*continued.*

bales of cotton] on board the ship at the time of her loss as hereinafter mentioned

2. That on the                      day of                      18                      , at                      , the defendants, in consideration of                      rupees which the plaintiff then paid [*or* promised to pay], executed to him a policy of insurance upon the said goods, a copy of which is hereto annexed [*or*, whereby they promised to pay to the plaintiff                      rupees in case of the total loss, by fire or other causes mentioned, of the said goods before their landing at                      ; *or*, in case of partial loss, such damage as the plaintiff might sustain thereby, provided the same should not exceed                      per centum of the whole value of the goods].

3 That on the                      day of                      18                      , at                      , while proceeding on the voyage mentioned in the said policy, the said goods were totally destroyed by fire (*or* as the case may be)

4, 5, and 6 [*As in paragraphs 4, 5, and 6 of the last preceding form.*]

[*Demand of judgment.*]

No. 51.

ON FREIGHT:—VALUED POLICY.

(*Title.*)

*A B*, the above-named plaintiff, states as follows:—

1. That the plaintiff had an interest in the freight to be earned by the ship                      on her voyage from                      to                      at the time of her loss as hereinafter mentioned and that a large quantity of goods was shipped upon freight in her at that time

2. That on the                      day of                      18                      , at                      , the defendant, in consideration of                      rupees to him paid, executed to the plaintiff a policy of insurance upon the said freight, a copy of which is hereto annexed [*or state its tenor, as before*]

3. That the said ship, while proceeding upon the voyage mentioned in the said policy, was, on the                      day of                      18                      , totally lost by [the perils of the sea].

4 That the plaintiff has not received any freight from the said ship, nor did she earn any on the said voyage, by reason of her loss as aforesaid

5 and 6 [*As in Form No 49*]

[*Demand of judgment*]

THE FOURTH SCHEDULE—*continued.*

No. 52

FOR A LOSS BY GENERAL AVERAGE.

(Title)

A. B, the above-named plaintiff, states as follows :—

1 That plaintiff was the owner of [or had an interest in] [one hundred bales of cotton] shipped on board a vessel called the Y Z, from to , at the time of the loss hereafter mentioned.

2. That on the day of 18 , at , in consideration of rupees [which the plaintiff then promised to pay], the defendant executed to the plaintiff a policy of insurance upon his said goods, a copy of which is hereto annexed [or state its tenor, as before].

3. That on the day of 18 , while proceeding on the voyage mentioned in the said policy, the said vessel was so endangered by perils of the sea that the master and crew thereof were compelled to, and did, cast into the sea a large part of her rigging and furniture.

4 That plaintiff was, by reason thereof, compelled to, and did, pay a general average loss of rupees.

5 That on the day of 18 , he furnished the defendant with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part

6. That the defendant has not paid the said loss

[Demand of judgment]

---

No 53

FOR A PARTICULAR AVERAGE LOSS.

(Title)

A B, the above-named plaintiff, states as follows :—

1 and 2. [As in the last preceding form]

3. That on the day of 18 , while on the high seas, the sea water broke into the said ship, and damaged the said [cotton] to the amount of rupees.

4 and 5. [As in paragraphs 5 and 6 of the last preceding form]

[Demand of judgment.]

THE FOURTH SCHEDULE—*continued.*

No. 54

ON A FIRE-INSURANCE POLICY.

(Title)

*A. B.*, the above-named plaintiff, states as follows:—

1. That plaintiff [was the owner of, *or*] had an interest in a [dwelling-house, known as No                      ,                      street, in the city of                      ,] at the time of its destruction [*or*, injury] by fire as hereinafter mentioned.
2. That on the                      day of                      18                      , at                      , in consideration of                      rupees [to them paid], the defendants executed to the plaintiff a policy of insurance on the said [premises], a copy of which is hereto annexed [*or state its tenor*]
3. That on the                      day of                      18                      , the said [dwelling-house] was totally destroyed [*or* greatly damaged] by fire.
4. That the plaintiff's loss thereby was                      rupees.
5. That on the                      day of                      18                      , he furnished the defendants with proof of his said loss and interest, and otherwise duly performed all the conditions of the said policy on his part.
6. That the defendants have not paid the said loss.

*[Demand of judgment]*

No 55.

AGAINST SURETY FOR PAYMENT OF RENT.

(Title)

*A. B.*, the above-named plaintiff, states as follows.—

1. That on the                      day of                      18                      , at                      , one *E. F.* hired from the plaintiff, for the term of                      years, the [house No.                      ,                      street,                      ] at the annual rent of                      rupees, payable [monthly].
- 2 That [at the same time and place] the defendant agreed, in consideration of the letting of the said premises to the said *E. F.*, to guarantee the punctual payment of the said rent.
3. That the rent aforesaid for the month of                      18                      , amounting to                      rupees, has not been paid

*[If, by the terms of the agreement, notice is required to be given to the surety, add:—]*

*(The Fourth Schedule.)*THE FOURTH SCHEDULE—*continued.*

4. That on the                      day of                      18    , the plaintiff gave notice to the defendant of the non-payment of the said rent, and demanded payment thereof.

5. That he has not paid the same.

*[Demand of judgment.]*

## B.—PLAINTS FOR COMPENSATION FOR BREACH OF CONTRACT.

No. 56.

## FOR BREACH OF AGREEMENT TO CONVEY LAND.

*(Title)*

A B., the above-named plaintiff, states as follows:—

1. That on the                      day of                      18    , at                      , the plaintiff and defendant entered into an agreement, under their hands, of which a copy is hereto annexed.

*[Or, That on, etc, the defendant agreed with the plaintiff that, in consideration of a deposit of                      rupees then paid, and of the further sum of [ten thousand] rupees payable as hereinafter mentioned, he would, on the                      day of                      18    , at                      , execute to the plaintiff a sufficient conveyance of [the house No.                      ,                      street, in the city of                      , free from all incumbrances; and the plaintiff agreed to pay [ten thousand] rupees for the same on delivery thereof]*

2. That on the                      day of                      18    , the plaintiff demanded the conveyance of the said property from the defendant and tendered                      rupees to the defendant *[or, that all conditions were fulfilled, and all things happened and all times elapsed necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part].*

3. That the defendant has not executed any conveyance of the said property to the plaintiff *[or, that there is a mortgage upon the said property, made by                      to                      , for                      rupees, registered in the office of                      , on the                      day of                      18    , and still unsatisfied, or any other defect of title].*

4. That the plaintiff has thereby lost the use of the money paid by him as such deposit as aforesaid and of other moneys provided by him for the completion of the said purchase, and has lost the expenses incurred by him in investigating the title of the defendant and in preparing to perform the

THE FOURTH SCHEDULE—*continued*.

agreement on his part, and has incurred expense in endeavouring to procure the performance thereof by the defendant.

5 The plaintiff prays judgment for                      rupees compensation.

No. 57.

## FOR BREACH OF AGREEMENT TO PURCHASE LAND.

(Title)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the                      day of                      18                      , at                      , the plaintiff and defendant entered into an agreement, under their hands, of which a copy is hereto annexed.

[*Or*, that on the                      day of                      18                      , at                      , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant and that the defendant should purchase from the plaintiff forty bighás of land in the village of                      for                      rupees ]

2 That on the                      day of                      18                      , at                      , the plaintiff, being then the absolute owner of the said property, [and the same being free from all incumbrances as was made to appear to the defendant], tendered to the defendant a sufficient instrument of conveyance of the same [*or*, was ready and willing, and offered, to convey the same to the defendant by a sufficient instrument], on the payment by the defendant of the said sum.

3. That the defendant has not paid the same.

[Demand of judgment]

No. 58.

*Another Form.*

## FOR NOT COMPLETING A PURCHASE OF IMMOVEABLE PROPERTY.

(Title)

*A. B.*, the above-named plaintiff, states as follows:—

1. That by an agreement dated the                      day of                      18                      , it was agreed by and between the plaintiff and the defendant that the plaintiff should sell to the defendant and the defendant should purchase from the plaintiff a house and land at the price of                      rupees, upon the terms and conditions following (that is to say):—

(a) That the defendant should pay the plaintiff a deposit of                      rupees in part of the said purchase-money on the signing of

THE FOURTH SCHEDULE—*continued.*

the said agreement, and the remainder on the                      day  
of                      18     , on which day the said purchase should  
be completed.

- (b) That the plaintiff should deduce and make a good title to the said premises on or before the                      day of 18     , and on payment of the said remainder of the said purchase-money as aforesaid should execute to the defendant a proper conveyance of the said premises, to be prepared at the defendant's expense.

2 That all conditions were fulfilled, and all things happened and all times elapsed necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part, yet the defendant did not pay the plaintiff the remainder of the said purchase-money as aforesaid on his part.

3. That the plaintiff has thereby lost the expense which he incurred in preparing to perform the said agreement on his part, and has been put to expense in endeavouring to procure the performance thereof by the defendant.

[*Demand of judgment*]

—  
No. 59.

FOR NOT DELIVERING GOODS SOLD.

(*Title*)

A B, the above-named plaintiff, states as follows:—

1. That on the                      day of                      18     , at                      , the plaintiff and defendant mutually agreed that the defendant should deliver [one hundred barrels of flour] to the plaintiff [on the day of                      18     ], and that the plaintiff should pay therefor rupees on delivery.

2. That on the [said] day the plaintiff was ready and willing, and offered to pay the defendant the said sum upon delivery of the said goods.

3. That the defendant has not delivered the same, whereby the plaintiff has been deprived of the profits which would have accrued to him from such delivery.

[*Demand of judgment.*]

THE FOURTH SCHEDULE—*continued*.

No. 60.

FOR BREACH OF CONTRACT TO EMPLOY.

(Title)

*A. B.*, the above-named plaintiff, states as follows:—

1 That on the                      day of                      18                      , at                      , the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as [an accountant, *or*, in the capacity of foreman, *or as the case may be*], and that the defendant should employ the plaintiff as such for the term of [one year], and pay him for his services                      rupees [monthly].

2 That on the                      day of                      18                      , the plaintiff entered upon the service of the defendant as aforesaid, and has ever since been, and still is, ready and willing to continue in such service during the remainder of the said year, whereof the defendant always has notice.

3. That on the                      day of                      18                      , the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid, or to pay him for his services.

*[Demand of judgment]*

No. 61.

FOR BREACH OF CONTRACT TO EMPLOY, WHERE THE EMPLOYMENT NEVER TOOK EFFECT.

(Title)

*A. B.*, the above-named plaintiff, states as follows:—1. *[As in last preceding Form]*

2. That on the                      day of                      18                      , at                      , the plaintiff offered to enter upon the service of the defendant, and has ever since been ready and willing so to do.

3. That the defendant refused to permit the plaintiff to enter upon such service, or to pay him for his services

*[Demand of judgment.]*

No. 62.

FOR BREACH OF CONTRACT TO SERVE.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the                      day of                      18                      , at                      ,

THE FOURTH SCHEDULE—*continued*.

the plaintiff and defendant mutually agreed that the plaintiff should employ the defendant at an [annual] compensation of                      rupees, and that the defendant should serve the plaintiff as [an artist] for the term of [one year]

2 That the plaintiff has always been ready and willing to perform his part of the said agreement [and on the                      day of 18                      , offered so to do]

3 That the defendant [entered upon] the service of the plaintiff on the above-mentioned day, but afterwards, on the                      day of 18                      , he refused to serve the plaintiff as aforesaid.

[Demand of judgment.]

---

No 63.

AGAINST A BUILDER FOR DEFECTIVE WORKMANSHIP.

(Title)

A B, the above-named plaintiff, states as follows:—

1. That on the                      day of                      18                      , at                      , the plaintiff and defendant entered into an agreement, of which copy is hereto annexed.

[Or state the tenor of the contract.]

[2 That the plaintiff duly performed all the conditions of the said agreement on his part.]

3. That the defendant [built the house referred to in the said agreement in a bad and unworkmanlike manner].

[Demand of judgment]

---

No. 64.

BY THE MASTER AGAINST THE FATHER OR GUARDIAN OF AN APPRENTICE.

(Title)

A B, the above-named plaintiff, states as follows:—

1. That on the                      day of                      18                      , at                      , defendant entered into an agreement, under his hand and seal,\* a copy of which is hereto annexed.

---

\* The form given in Act XIX of 1850 requires the seal of the father or guardian.

THE FOURTH SCHEDULE—*continued.*

[Or state the tenor of the contract]

2 That after the making of the said agreement the plaintiff received the said [*apprentice*] into his service as such apprentice for the term aforesaid, and has always performed and been ready and willing to perform all things in the said agreement on his part to be performed

3. That on the                      day of                      18     , the said [*apprentice*] wilfully absented himself from the service of the plaintiff, and continued so to do.

[Demand of judgment.]

No. 65.

## BY THE APPRENTICE AGAINST THE MASTER.

(Title)

A. B., the above-named plaintiff, states as follows:—

1 That on the                      day of                      18     , at                      , the defendant entered into an agreement with the plaintiff and his [father], E. F., under their hands and seals, a copy of which is hereto annexed

2. That after the making of the said agreement the plaintiff entered into the service of the defendant with him after the manner of an apprentice to serve for the term mentioned in the said agreement and has always performed all things in the said agreement contained on his part to be performed.

3. That the defendant has not [instructed the plaintiff in the business of                      , or state any other breach, such as cruelty, failure to provide sufficient food, or other ill-treatment].

[Demand of judgment.]

No. 66.

## ON A BOND FOR THE FIDELITY OF A CLERK.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1 That on the                      day of                      18     , at                      , plaintiff employed one E. F. as a clerk.

THE FOURTH SCHEDULE—*continued*.

2. That on the                      day of                      18                      , at                      , the defendant agreed with the plaintiff that if the said *E. F.* should not faithfully perform his duties as a clerk to the plaintiff, or should fail to account to the plaintiff for all moneys, evidences of debt or other property received by him for the use of the plaintiff, the defendant would pay to the plaintiff whatever loss he might sustain by reason thereof, not exceeding                      rupees

[*Or*, 2. That at the same time and place the defendant bound himself to the plaintiff, by a writing under his hand in the penal sum of                      rupees, conditioned that if the said *E. F.* should faithfully perform his duties as clerk and cashier to the plaintiff and should justly account to the plaintiff for all moneys, evidences of debt or other property which should be at any time held by him in trust for the plaintiff, the same should be void but not otherwise ]

[*Or*, 2. That at the same time and place the defendant executed to the plaintiff a bond, a copy of which is hereto annexed.]

3 That between the                      day of                      18                      and the                      day of                      18                      , the said *E. F.* received money and other property, amounting to the value of                      rupees, for the use of the plaintiff, for which he has not accounted to him, and the same still remains due and unpaid.

[*Demand of judgment* ]

---

No 67

BY TENANT AGAINST LANDLORD, WITH SPECIAL DAMAGE.

(*Title* )

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the                      day of                      18                      , at                      , the defendant, by an instrument in writing, let to the plaintiff [the house No.                      ,                      street], for the term of                      years, contracting with the plaintiff that he, the plaintiff, and his legal representative should quietly enjoy possession thereof for the said term.

2. That all conditions were fulfilled and all things happened necessary to entitle the plaintiff to maintain this suit.

THE FOURTH SCHEDULE—*continued.*

3. That on the                      day of                      during the said term, one *E. F.*, who was the lawful owner of the said house, lawfully evicted the plaintiff therefrom, and still withholds the possession thereof from him.

4. That the plaintiff was thereby [prevented from continuing the business of a tailor at the said place, was compelled to expend                      rupees in moving, and lost the custom of *G. H.* and *I. J.* by such removal].

[*Demand of judgment*]

—  
No. 68.

FOR BREACH OF WARRANTY OF MOVEABLES.

(*Title*)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the                      day of                      18     , at                      , the defendant warranted a steam-engine to be in good working order, and thereby induced the plaintiff to purchase the same of him, and to pay him                      rupees therefor.

2 That the said engine was not then in good working order, whereby the plaintiff incurred expense in having the said engine repaired, and lost the profits which could otherwise have accrued to him while the engine was under repair.

[*Demand of judgment*]

—  
No 69.

ON AN AGREEMENT OF INDEMNITY.

(*Title.*)

*A B.*, the above-named plaintiff, states as follows:—

1. That on the                      day of                      18     , at                      , the plaintiff and defendant, being partners in trade under the firm of *A. B.* and *C D*, dissolved the said partnership, and mutually agreed that the defendant should take and keep all the partnership property, pay all debts of the firm, and indemnify the plaintiff against all claims that might be made upon him on account of any indebtedness of the said firm.

2. That the plaintiff duly performed all the conditions of the said agreement on his part.

## (The Fourth Schedule)

THE FOURTH SCHEDULE—*continued*.

3 That on the                      day of                      18    , [a judgment was recovered against the plaintiff and defendant by one *E. F.*, in the High Court of Judicature at                      , upon a debt due from the said firm to the said *E. F.*, and on the                      day of                      18    ,] the plaintiff paid                      rupees [in satisfaction of the same].

4. That the defendant has not paid the same to the plaintiff.

[*Demand of judgment*]

No. 70.

BY SHIPOWNER AGAINST FREIGHTOR FOR NOT LOADING

(*Title*)

*A B*, the above-named plaintiff, states as follows:—

1 That on the                      day of                      18    , at                      , the plaintiff and defendant entered into an agreement, a copy of which is hereto annexed.

[*Or*, 1. That on                      , at                      , the plaintiff and defendant agreed by charter-party that the defendant should deliver to the plaintiff's ship                      at                      , on the                      day of                      18    , five hundred tons of merchandise, which she should carry to                      , and there deliver, on payment of                      freight; and that the defendant should have                      days for loading,                      days for discharge, and                      days for demurrage, if required, at                      rupees per day]

2. That at the time fixed by the said agreement the plaintiff was ready and willing, and offered, to receive [the said merchandise, *or*, the merchandise mentioned in the said agreement] from the defendant.

3. That the period allowed for loading and demurrage has elapsed, but the defendant has not delivered the said merchandise to the said vessel.

Wherefore, the plaintiff demands judgment for                      rupees for demurrage and                      rupees additional for compensation.

C.—PLAINTS FOR COMPENSATION UPON WRONGS.

No. 71.

FOR TRESPASS ON LAND.

(*Title*)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the                      day of                      18    , at                      the defendant entered upon certain land of the plaintiff, known as

THE FOURTH SCHEDULE—*continued*

[and depastured the same with cattle, trod down the grass, cut the timber, and otherwise injured the same].

[*Demand of judgment*]

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No 72.

FOR TRESPASS IN ENTERING A DWELLING-HOUSE.

(*Title*)

*A. B*, the above-named plaintiff, states as follows:—

1. That the defendant entered a dwelling-house of the plaintiff, called , and made a noise and disturbance therein for a long time, and broke open the doors of the said dwelling-house, and removed, took and carried away the fixtures and goods of the plaintiff therein, and disposed of the same to the defendant's own use, and expelled the plaintiff and his family from the possession of the said dwelling-house, and kept them so expelled for a long time.

2. That the plaintiff was thereby prevented from carrying on his business, and incurred expense in procuring another dwelling-house for himself and family.

[*Demand of judgment*]

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No. 73.

FOR TRESPASS ON MOVEABLES

(*Title*)

*A B*, the above-named plaintiff, states as follows:—

1 That on the                      day of                      18                      , at                      , the defendant broke open ten barrels of rum belonging to the plaintiff, and emptied their contents into the street [*or, seized and took the plaintiff's goods, that is to say, iron, rice and household furniture, or as the case may be, and carried away the same and disposed of them to his own use*]

[*Or, seized and took the plaintiff's cows and bullocks, and impounded them and kept them impounded for a long time*]

2 That the plaintiff was thereby deprived of the use of the cows and bullocks during that time, and incurred expense in feeding them and in getting them restored to him, and was also prevented from selling them at                      fair, as he otherwise would have done, and the said cows and bul-

THE FOURTH SCHEDULE—*continued.*

locks are diminished in value to the plaintiff [*otherwise, state the injury according to the facts*]

[*Demand of judgment*]

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No 74.

FOR THE CONVERSION OF MOVEABLE PROPERTY.

(*Title*)

*A B*, the above-named plaintiff, states as follows.—

1 That on the                      day of                      18     , plaintiff was in possession of certain goods described in the schedule hereto annexed [*or, of one thousand barrels of flour*]

2 That on that day, at                      , the defendant converted the same to his own use, and wrongfully deprived the plaintiff of the use and possession of the same.

[*Demand of judgment*]  
*The Schedule.*

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No 75.

AGAINST A WAREHOUSEMAN FOR REFUSAL TO DELIVER GOODS.

(*Title*)

*A B.*, the above-named plaintiff, states as follows.—

1. That on the                      day of                      18     , at                      , the defendant, in consideration of the payment to him of                      rupees [*or,                      rupees per barrel, per month, etc*], agreed to keep in his godown [*one hundred barrels of flour*] and to deliver the same to the plaintiff on payment of the said sum

2 That thereupon the plaintiff deposited with the defendant the said [*hundred barrels of flour*].

3. That on the                      day of                      18     , the plaintiff requested the defendant to deliver the said goods, and tendered him rupees [*or, the full amount of storage due thereon*], but the defendant refused to deliver the same.

4 That the plaintiff was thereby prevented from selling the said goods to *E. F.* and the same are lost to the plaintiff.

[*Demand of judgment.*]

THE FOURTH SCHEDULE—*continued.*

No. 76.

FOR PROCURING PROPERTY BY FRAUD.

(*Title*)

*A B*, the above-named plaintiff, states as follows:—

1. That on the                      day of                      18                      , at                      , the defendant, for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he, the defendant, was solvent, and worth                      rupees over all his liabilities].

2. That the plaintiff was thereby induced to sell [and deliver] to the defendant [dry goods] of the value of                      rupees

3 That the said representations were false [*or, state the particular falsehoods*] and were then known by the defendant to be so.

4. That the defendant has not paid for the said goods. [*Or if the goods were not delivered, That the plaintiff, in preparing and shipping the said goods and procuring their restoration, expended                      rupees*]

[*Demand of judgment.*]

No. 77.

FOR FRAUDULENTLY PROCURING CREDIT TO BE GIVEN TO ANOTHER PERSON.

(*Title*)

*A. B*, the above-named plaintiff, states as follows.—

1. That on the                      day of                      18                      , at                      , the defendant represented to the plaintiff that one *E. F* was solvent and in good credit, and worth                      rupees over all his liabilities [*or, that E. F. then held a responsible situation and was in good circumstances, and might safely be trusted with goods on credit.*]

2. That the plaintiff was thereby induced to sell to the said *E F*, [rice] of the value of                      rupees [on                      month's credit].

3. That the said representations were false and were then known by the defendant to be so, and were made by him with intent to deceive and defraud the plaintiff [*or, to deceive and injure the plaintiff*]

4. That the said *E. F* [did not pay for the said goods at the expiration of the credit aforesaid, *or*] has not paid for the said rice, and the plaintiff has wholly lost the same by reason of the premises.

[*Demand of judgment.*]

THE FOURTH SCHEDULE—*continued.*

No 78.

FOR POLLUTING THE WATER UNDER THE PLAINTIFF'S LAND.

(Title)

*A. B.*, the above-named plaintiff, states as follows:—

1. That he is, and at all the times hereinafter mentioned was, possessed of certain land called \_\_\_\_\_ and situate in \_\_\_\_\_, and of a well therein, and of water in the said well, and was entitled to the use and benefit of the said well and of the said water therein, and to have certain springs and streams of water which flowed and ran into the said well to supply the same to flow or run without being fouled or polluted

2. That on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, the defendant wrongfully fouled and polluted the said well and the said water therein and the said springs and streams of water which flowed into the said well.

3. That by reason of the premises the said water in the said well became impure and unfit for domestic and other necessary purposes, and the plaintiff and his family are deprived of the use and benefit of the said well and water

[Demand of judgment.]

No. 79

FOR CARRYING ON A NOXIOUS MANUFACTURE.

(Title)

*A. B.*, the above-named plaintiff, states as follows:—

1. That the plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called \_\_\_\_\_, situate in \_\_\_\_\_.

2. That ever since the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large quantities of offensive and unwholesome smoke and other vapours and noxious matter, which spread themselves over and upon the said lands, and corrupted the air, and settled on the surface of the said lands.

3. That thereby the trees, hedges, herbage and crops of the plaintiff growing on the said lands were damaged and deteriorated in value and the cattle and live-stock of the plaintiff on the said lands became unhealthy, and divers of them were poisoned and died.

THE FOURTH SCHEDULE—continued.

4. That by reason of the premises the plaintiff was unable to depasture the said lands with cattle and sheep as he otherwise might have done, and was obliged to remove his cattle, sheep and farming-stock therefrom, and has been prevented from having so beneficial and healthy a use and occupation of the said lands as he otherwise would have had.

[Demand of judgment.]

No 80

### FOR OBSTRUCTING A WAY.

(Title)

A. B., the above-named plaintiff, states as follows :—

1. That the plaintiff is, and at the time hereinafter mentioned was, possessed of [a house in the village of \_\_\_\_\_].

2. That he was entitled to a right of way from the said [house] over a certain field to a public highway and back again from the said highway over the said field to the said house, for himself and his servants [with vehicles, *or*, on foot] at all times of the year

3. That on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, defendant wrongfully obstructed the said way, so that the plaintiff could not pass [with vehicles, *or*, on foot, *or*, in any manner] along the said way [and has ever since wrongfully obstructed the same].

4. [State special damage if any.]

[Demand of judgment.]

*Another Form.*

1. That the defendant wrongfully dug a trench and heaped up earth and stones in the public highway leading from \_\_\_\_\_ to \_\_\_\_\_ so as to obstruct it.

2 That thereby the plaintiff, while lawfully passing along the said highway, fell over the said earth and stones [*or, into the said trench*] and broke his arm, and suffered great pain, and was prevented from attending to his business for a long time, and incurred expense for medical attendance.

[Demand of judgment.]

## (The Fourth Schedule.)

## THE FOURTH SCHEDULE—continued.

No. 81.

## FOR DIVERTING A WATER-COURSE.

(Title)

A. B., the above-named plaintiff, states as follows:—

1. That the plaintiff is, and at the time hereinafter mentioned was, possessed of a mill situated on a [stream] known as the , in the village of , district of .

2. That by reason of such possession the plaintiff was entitled to the flow of the said stream for working the said mill.

3 That on the day of 18 , the defendant, by cutting the bank of the said stream, wrongfully diverted the water thereof, so that less water ran into the plaintiff's mill.

4. That by reason thereof the plaintiff has been unable to grind more than sacks per day whereas, before the said diversion of water, he was able to grind sacks per day.

[Demand of judgment.]

No. 82.

## FOR OBSTRUCTING A RIGHT TO USE WATER FOR IRRIGATION.

(Title)

A. B., the above-named plaintiff, states as follows:—

1. That the plaintiff is, and was at the time hereinafter mentioned, possessed of certain lands situate, etc., and entitled to take and use a portion of the water of a certain stream for irrigating the said lands.

2 That on the day of the defendant prevented the plaintiff from taking and using the said portion of the said water as aforesaid, by wrongfully obstructing and diverting the said stream.

[Demand of judgment.]

No. 83.

## FOR WASTE BY A LESSEE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , the defendant hired from him [the house No. , street] for the term of

THE FOURTH SCHEDULE—*continued.*

2. That the defendant occupied the same under such hiring
3. That during the period of such occupation the defendant greatly injured the premises [defaced the walls, tore up the floors and broke down the doors; *or otherwise specify the injuries as far as possible*].

The plaintiff prays judgment for \_\_\_\_\_ rupees compensation.

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No. 84.

## FOR ASSAULT AND BATTERY.

(Title)

A. B., the above-named plaintiff, states as follows:—

That on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, at \_\_\_\_\_, the defendant assaulted and beat him

The plaintiff prays judgment for \_\_\_\_\_ rupees compensation.

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No. 85.

## FOR ASSAULT AND BATTERY, WITH SPECIAL DAMAGE.

(Title)

A. B., the above-named plaintiff, states as follows:—

1. That on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, at \_\_\_\_\_ the defendant assaulted and beat him until he became insensible

2. That the plaintiff was thereby disabled from attending to his business for [six weeks thereafter] and was compelled to pay \_\_\_\_\_ rupees for medical attendance, and has been ever since disabled [from using his right arm]. [*Or otherwise state the damage, as the case may be*]

[Demand of judgment.]

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No. 86

## FOR ASSAULT AND FALSE IMPRISONMENT.

(Title)

A. B., the above-named plaintiff, states as follows:—

1. That on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, at \_\_\_\_\_, the defendant assaulted the plaintiff and imprisoned him for \_\_\_\_\_ days [or, hours]; [*state special damage, if any, thus:—*]

2. That by reason thereof the plaintiff suffered great pain of body and mind and was exposed and injured in his credit and circumstances, and was

THE FOURTH SCHEDULE—*continued*

prevented from carrying on his business and from providing for his family by his personal care and attention, and incurred expense in obtaining his liberation from the said imprisonment [*or otherwise as the case may be*].

[*Demand of judgment*]

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No 87.

## FOR INJURIES CAUSED BY NEGLIGENCE ON A RAILROAD.

(*Title*)

A B., the above-named plaintiff, states as follows:—

1 That on the                      day of                      18     , the defendants were common carriers of passengers by railway between                      and                      .

2 That on that day the plaintiff was a passenger in one of the carriages of the defendants on the said road

3 That while he was such passenger, at                      [*or, near the station of*                      *or, between the stations of*                      and                      ], a collision occurred on the said railway, caused by the negligence and unskilfulness of the defendants' servants, whereby the plaintiff was much injured [*having his leg broken, his head cut, etc., and state the special damage, if any, as*], and incurred expense for medical attendance and is permanently disabled from carrying on his former business as [a salesman].

[*Demand of judgment.*]

[*Or thus.*—2 That on that day the defendants by their servants so negligently and unskilfully drove and managed an engine and a train of carriages attached thereto upon and along the defendants' railway which the plaintiff was then lawfully crossing, that the said engine and train were driven and struck against the plaintiff, whereby, *etc., as in § 3.*]

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No. 88

## FOR INJURIES CAUSED BY NEGLIGENT DRIVING.

(*Title*)

A. B., the above-named plaintiff, states as follows:—

1 The plaintiff is a shoemaker, carrying on business at                      The defendant is a merchant of                      .

THE FOURTH SCHEDULE—*continued*.

2. On the [23rd May, 1875], the plaintiff was walking eastward along Chowringhee, in the City of Calcutta, at about 3 o'clock in the afternoon. He was obliged to cross Harrington Street, which is a street running into Chowringhee at right angles. While he was crossing this street, and just before he could reach the foot-pavement on the further side thereof, a carriage of the defendant's drawn by two horses, under the charge and control of the defendant's servants, was negligently, suddenly and without any warning turned at a rapid and dangerous pace out of Harrington Street into Chowringhee. The pole of the carriage struck the plaintiff and knocked him down, and he was much trampled by the horses

3 By the blow and fall and trampling the plaintiff's left arm was broken and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

The plaintiff claims

rupees damages.

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(Title)

*Written Statement of defendant.*

1. The defendant denies that the carriage mentioned in the plaint was the defendant's carriage, or that it was under the charge or control of the defendant's servants. The carriage belonged to [Messrs. *E. F.* and *G. H.*] of Street, Calcutta, livery stable-keepers, employed by the defendant to supply him with carriages and horses; and the person under whose charge and control the said carriage was, was the servant of the said [Messrs *E F* and *G H*]

2 The defendant does not admit that the said carriage was turned out of Harrington Street either negligently, suddenly or without warning, or at a rapid or dangerous pace.

3. The defendant says that the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the said carriage approaching him, and avoided any collision with it.

4. The defendant does not admit the statements of the third paragraph of the plaint.

THE FOURTH SCHEDULE—*continued.*

No. 89.

FOR LIBEL ; THE WORDS BEING LIBELLOUS IN THEMSELVES.

(Title)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the                      day of                      18                      , at                      ,  
the defendant published in a newspaper, called the                      [or, in a  
letter addressed to *E. F.*], the following words concerning the plaintiff:—

[Set forth the words used]

2. That the said publication was false and malicious.

[Demand of judgment]

NOTE —If the libel was in a language not the language of the Court, set out the libel *verbatim* in the foreign language in which it was published, and then proceed thus —  
“Which said words, being translated into the                      language, have  
the meaning and effect following and were so understood by the persons to whom  
they were so published, that is to say” [here set out a literal translation of the libel  
in the language of the Court].

No. 90.

FOR LIBEL ; THE WORDS NOT BEING LIBELLOUS IN THEMSELVES.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That the plaintiff [is, and] was, on and before the                      day,  
of                      18                      , a merchant doing business in the city of                      .

2. That on the                      day of                      18                      , at                      ,  
the defendant published in a newspaper, called the                      [or, in a  
letter addressed to *E. F.*, or otherwise how published], the following words  
concerning the plaintiff:—

[“*A. B.* of this city has modestly retired to foreign lands. It is said  
that creditors to the amount of                      rupees are anxiously seeking  
his address ]

3. That the defendant meant thereby that [the plaintiff had absconded  
to avoid his creditors, and with intent to defraud them].

4. That the said publication was false and malicious.

[Demand of judgment.]

THE FOURTH SCHEDULE—*continued.*

No 91.

FOR SLANDER, THE WORDS BEING ACTIONABLE IN THEMSELVES.

(Title)

'A B., the above-named plaintiff, states as follows:—

1. That on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, at \_\_\_\_\_, the defendant falsely and maliciously spoke, in the hearing of *E F* [*or*, sundry persons], the following words concerning the plaintiff: ["He is a thief."]

2. That in consequence of the said words the plaintiff lost his situation as \_\_\_\_\_ in the employ of \_\_\_\_\_.

[Demand of judgment]

No 92.

FOR SLANDER, THE WORDS NOT BEING ACTIONABLE IN THEMSELVES

(Title)

A. B., the above-named plaintiff, states as follows:—

1. That on the                      day of                      18        , at                      ,  
the defendant falsely and maliciously said to one E. F. concerning the  
plaintiff: ["He is a young man of remarkably easy conscience."]

2. That the plaintiff was then seeking employment as a clerk, and the defendant meant, by the said words, that the plaintiff was not trustworthy, as a clerk.

3. That in consequence of the said words [the said *E. F.* refused to employ the plaintiff as a clerk].

[Demand of judgment.]

No 93.

FOR MALICIOUS PROSECUTION.

(Title)

A. B., the above-named plaintiff, states as follows. —

1. That on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, at \_\_\_\_\_ the defendant obtained a warrant of arrest from [a Magistrate of the said city, *or, as the case may be*] on a charge of \_\_\_\_\_, and the plaintiff was arrested thereon, and imprisoned for [days, *or*, hours, and gave bail in the sum of \_\_\_\_\_ rupees to obtain his release].

## (The Fourth Schedule)

THE FOURTH SCHEDULE—*continued.*

2 That in so doing the defendant acted maliciously and without reasonable or probable cause.

3. That on the                      day of                      18                      , the said Magistrate dismissed the complaint of the defendant and acquitted the plaintiff

4. That many persons, whose names are unknown to the plaintiff, hearing of the said arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him; *or*, that, in consequence of the said arrest, the plaintiff lost his situation as clerk to one *E F.*, *or*, that by reason of the premises the plaintiff suffered pain of body and mind, and was prevented from transacting his business, and was injured in his credit, and incurred expense in obtaining his release from the said imprisonment and in defending himself against the said complaint.

[Demand of judgment.]

## D—PLAINTS IN SUITS FOR SPECIFIC PROPERTY

No 94

BY THE ABSOLUTE OWNER FOR THE POSSESSION OF IMMOVEABLE PROPERTY.

*(Title)*

*A. B.*, the above-named plaintiff, states as follows:—

1. That *X Y.* was the absolute owner [of the estate, *or*, share of the estate, called                      , situate in the district of                      , the Government revenue of which is rupees                      and the estimated value                      rupees, *or*, of the house No.                      ,                      street in the town of Calcutta, the estimated value of which is rupees                      ]

2 That on the                      day of                      18                      , *Z.* illegally dispossessed the said *X Y.* of the said estate [*or*, share, *or*, house].

3. That the said *X. Y.* has since died intestate, leaving the plaintiff, the said *A B.*, his heir him surviving

4 That the defendant withholds the possession of the estate [*or*, share, *or*, house] from the plaintiff.

The plaintiff prays judgment—

(1) for the possession of the said premises;

(2) for                      rupees compensation for withholding the same.

Another Form.

*A B.*, the above-named plaintiff, states as follows:—

1. On the                      day of                      , plaintiff, by an instrument in writing, let to the defendant a house and premises [No 52, Russell

THE FOURTH SCHEDULE—*continued.*

Street, in the                   ] for a term of five years from the                   day  
of                   , at the monthly rent of 300 rupees.

2. By the said instrument the defendant covenanted to keep the said house and premises in good and tenantable repair.

3. The said instrument also contained a clause of re-entry, entitling the plaintiff to re-enter upon the said house and premises, in case the rent thereby reserved, whether demanded or not, should be in arrear for twenty-one days, or in case the defendant should make default in the performance of any covenant upon his part to be performed.

4 On the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, a month's rent be-  
came due and on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_ another month's  
rent became due, on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, both had  
been in arrear for twenty-one days and both are still due.

5 On the same day of 18 , the house and premises were not and are not now in good or tenantable repair, and it would require the expenditure of a large sum of money to re-instate the same in good and tenantable repair, and the plaintiff's reversion is much depreciated in value. The plaintiff claims—

- (1) possession of the said house and premises;
- (2) rupees for arrears of rent;
- (3) rupees compensation for the defendant's breach of his covenant to repair;
- (4) rupees for the occupation of the house and premises from the day of 18 to the day of recovering possession.

No. 95.

BY THE TENANT.

(Title)

A. B., the above-named plaintiff, states as follows:—

1. That one *E. F.* is the absolute owner of [a piece of land in the town of Calcutta bounded as follows: ], the estimated value of which is rupees

2. That on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, the said *E. F.* let the said premises to the plaintiff for \_\_\_\_\_ years, from \_\_\_\_\_ to \_\_\_\_\_ from the plaintiff

3. That the defendant withholds the possession thereof from the plaintiff.

[Demand of judgment.]

## (The Fourth Schedule.)

THE FOURTH SCHEDULE—*continued*.

No. 96.

## FOR MOVABLE PROPERTY WRONGFULLY TAKEN

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the                      day of                      18     , plaintiff owned [or, was possessed of] one hundred barrels of flour, the estimated value of which is                      rupees.

2. That on that day, at                      , the defendant took the same.

The plaintiff prays judgment—

(1) for the possession of the said goods, or for                      rupees in case such possession cannot be had;

(2) for                      rupees compensation for the detention thereof.

No. 97.

## FOR MOVEABLES WRONGFULLY DETAINED.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the                      day of                      18     , plaintiff owned [or state facts showing a right to the possession] the goods mentioned in the schedule hereto annexed [or describe the goods], the estimated value of which is                      rupees

2 That from that day until the commencement of this suit the defendant has detained the same from the plaintiff.

3 That before the commencement of this suit, to wit, on the day of                      18     , the plaintiff demanded the same from the defendant, but he refused to deliver them.

The plaintiff prays judgment—

(1) for the possession of the said goods, or for                      rupees, in case such possession cannot be had;

(2) for                      rupees compensation for the detention thereof.

*The Schedule.*

No. 98.

## AGAINST A FRAUDULENT PURCHASER AND HIS TRANSFEREE WITH NOTICE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the                      day of                      18     , at                      , the defendant [C. D], for the purpose of inducing the plaintiff to sell him

THE FOURTH SCHEDULE—*continued*

certain goods, represented to the plaintiff that [he was solvent, and worth rupees over all his liabilities]

2 That the plaintiff was thereby induced to sell and deliver to the said *C D* [one hundred boxes of tea], the estimated value of which is rupees.

3. That the said representations were false, and were then known by the said *C D*. to be so. [*Or*, That, at the time of making the said representations, the said *C. D* was insolvent, and knew himself to be so ]

4 That the said *C D*. afterwards transferred the said goods to the defendant *E. F*. without consideration [*or*, who had notice of the falsity of the representation].

The plaintiff prays judgment—

- (1) for the possession of the said goods, or for rupees, in case such possession cannot be had;
- (2) for rupees compensation for the detention thereof.

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*E*—PLAINTS IN SUITS FOR SPECIAL RELIEF.

No 99.

FOR RESCISSION OF A CONTRACT ON THE GROUND OF MISTAKE

(*Title*)

*A B*, the above-named plaintiff, states as follows:—

1. That on the day of 18 , the defendant represented to the plaintiff that a certain piece of ground belonging to the defendant, situated at , contained [ten bighás].

2. That the plaintiff was thereby induced to purchase the same at the price of rupees in the belief that the said representation was true, and signed an instrument of agreement, of which a copy is hereto annexed. But no conveyance of the same has been executed to him

3. That on the day of 18 , the plaintiff paid the defendant rupees as part of such purchase-money.

4. That the said piece of ground contained in fact only [five bighás].

The plaintiff prays judgment—

- (1) for rupees, with interest from the day of 18 ;
- (2) that the said agreement of purchase be delivered up and cancelled.

(The Fourth Schedule.)

## THE FOURTH SCHEDULE—continued.

No 100

FOR AN INJUNCTION RESTRAINING WASTE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff is the absolute owner of [*describe the property*].
2. That the defendant is in possession of the same under a lease from the plaintiff
3. That the defendant has [cut down a number of valuable trees, and threatens to cut down many more for the purpose of sale] without the consent of the plaintiff.

The plaintiff prays judgment that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.

[*Pecuniary compensation might also be prayed*]

No. 101.

FOR ABATEMENT OF A NUISANCE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of [the house No.                      ,                      Street, Calcutta]
2. That the defendant is, and at all the said times was, the absolute owner of [a plot of ground in the same street                      ].
- 3 That on the                      day of                      18                      , the defendant erected upon his said plot a slaughter-house, and still maintains the same, and from that day until the present time has continually caused cattle to be brought and killed there [and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff]
4. That [the plaintiff has been compelled, by reason of the premises, to abandon the said house, and has been unable to rent the same]

The plaintiff prays judgment that the said nuisance be abated.

No. 102.

FOR AN INJUNCTION AGAINST THE DIVERSION OF A WATER-COURSE.

(Title)

A. B., the above-named plaintiff, states as follows:—

[*As in Form No. 81.*]

THE FOURTH SCHEDULE—*continued.*

The plaintiff prays judgment that the defendant be restrained by injunction from diverting the water as aforesaid.

No. 103.

FOR RESTORATION OF MOVEABLE PROPERTY THREATENED WITH DESTRUCTION, AND FOR AN INJUNCTION.

(Title)

*A. B.*, the above-named plaintiff, states as follows:—

1. That plaintiff is, and at all times hereinafter mentioned was, the owner of [a portrait of his grandfather which was executed by an eminent painter], and of which no duplicate exists [*or, state any facts showing that the property is of a kind that cannot be replaced by money*].

2. That on the                      day of                      18     , he deposited the same for safe keeping with the defendant.

3. That on the                      day of                      18     , he demanded the same from the defendant and offered to pay all reasonable charges for the storage of the same.

4 That the defendant refuses to deliver the same to the plaintiff and threatens to conceal, dispose of, cut or injure the same if required to deliver it up

5 That no pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the [painting];

The plaintiff prays judgment—

(1) that the defendant be restrained by injunction from disposing of, injuring or concealing the said [painting];

(2) that he return the same to the plaintiff.

No. 104.

INTERPLEADER.

(Title)

*A. B.*, the above-named plaintiff, states as follows:—

1. That before the date of the claims hereinafter mentioned one *G. H.* deposited with the plaintiff [*describe the property*] for [safe keeping].

2. That the defendant, *C. D.*, claims the same [under an alleged assignment thereof to him from the said *G. H.*]

## (The Fourth Schedule.)

THE FOURTH SCHEDULE—*continued.*

3 That the defendant *E. F.*, also claims the same [under an order of the said *G. H.* transferring the same to him].

4 That the plaintiff is ignorant of the respective rights of the defendants

5 That he has no claim upon the said property, and is ready and willing to deliver it to such persons as the Court shall direct.

6. That this suit is not brought by collusion with either of the defendants.

The plaintiff prays judgment—

(1) that the defendants be restrained, by injunction, from taking any proceedings against the plaintiff in relation thereto;

(2) that they be required to interplead together concerning their claims to the said property;

[(3) that some person be authorized to receive the said property pending such litigation;]

(4) that upon delivering the same to such [person] the plaintiff be discharged from all liability to either of the defendants in relation thereto.

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No. 105.

## ADMINISTRATION BY CREDITOR.

## (Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. *E. F.*, late of \_\_\_\_\_, was at the time of his death, and his estate still is, indebted to the plaintiff in the sum of \_\_\_\_\_ [here insert nature of debt and security, if any].

2. The said *E. F.* made his will, dated the \_\_\_\_\_ day of \_\_\_\_\_, and thereof appointed *C. D.* executor [or, devised his estate in trust, etc., or, died intestate, as the case may be]

3. The said will was proved by the said *C. D.* [or, letters of administration were granted, etc.]

4. The defendant has possessed himself of the moveable [and immoveable, or, the proceeds of the immoveable] property of the said *E. F.*, and has not paid the plaintiff his said debt.

5. The said *E. F.* died on or about the \_\_\_\_\_ day of \_\_\_\_\_.

6. The plaintiff prays that an account may be taken of the moveable [and immoveable] property of the said *E. F.*, deceased, and that the same may be administered under the decree of the Court.

THE FOURTH SCHEDULE—*continued.*

No. 106.

### ADMINISTRATION BY SPECIFIC LEGATEE

(Title)

[Alter Form No. 105 thus :—]

[Omit paragraph 1 and commence paragraph 2] E. F., late of \_\_\_\_\_, duly made his last will, dated the \_\_\_\_\_ day of \_\_\_\_\_, and thereof appointed C. D. executor, and by such will bequeathed to the plaintiff [here state the specific legacy] \_\_\_\_\_.

For paragraph 4 substitute—

The defendant is in possession of the moveable property of the said *E. F.*, and, amongst other things, of the said [*here name the subject of, the specific bequest*]

For the commencement of paragraph 6 substitute—

The plaintiff prays that the defendant may be ordered to deliver to him the said [here name the subject of the specific bequest], or that, etc.

No. 107.

## ADMINISTRATION BY PECUNIARY LEGATEE

(Title)

[Alter Form No 105 thus. —]

[Omit paragraph 1 and substitute for paragraph 2] E F, late of \_\_\_\_\_, duly made his last will, dated the \_\_\_\_\_ day of \_\_\_\_\_, and thereof appointed C. D. executor, and by such will bequeathed to the plaintiff a legacy of \_\_\_\_\_ rupees.

*In paragraph 4 substitute "legacy" for "debt."*

### Another Form

Between *E. F.* ... *Plaintiff,*

and

G. H. ... Defendant.

*E. F.*, the above-named plaintiff, states as follows:—

1. A B. of K. in the                      duly made his last will, dated the [first day of March, 1873], whereby he appointed the defendant and M. N. [who died in the testator's lifetime] executors thereof, and bequeathed his property, whether moveable or immoveable, to his executors in trust, to pay the rents and income thereof to the plaintiff for his life; and after his

THE FOURTH SCHEDULE—*continued.*

decease, and in default of his having a son who should attain twenty-one, or a daughter who should attain that age or marry, upon trust as to his immoveable property for the person who would be the testator's heir-at-law, and as to his moveable property for the persons who would be the testator's next-of-kin if he had died intestate at the time of the death of the plaintiff, and such failure of his issue as aforesaid

2. The testator died on the [first day of July, 1878], and his will was proved by the defendant on the [fourth day of October 1878]. The plaintiff has not been married

3 The testator was at his death entitled to moveable and immoveable property; the defendant entered into the receipt of the rents of the immoveable property and got in the moveable property; he has sold some part of the immoveable property.

The plaintiff claims—

- (1) to have the moveable and immoveable property of *A B* administered in this Court, and for that purpose to have all proper directions given and accounts taken ;
- (2) such further or other relief as the nature of the case may require.

Between *E F* .. Plaintiff,

and

*G. H.* .. Defendant.

*Written Statement of Defendant.*

1 *A B*'s will contained a charge of debts; he died insolvent, he was entitled at his death to some immoveable property which the defendant sold, and which produced the nett sum of rupees , and the testator had some moveable property which the defendant got in, and which produced the nett sum of rupees.

2. The defendant applied the whole of the said sums and the sum of rupees which the defendant received from rents of the immoveable property in the payment of the funeral and testamentary expenses and some of the debts of the testator.

3 The defendant made up his accounts and sent a copy thereof to the plaintiff on the [tenth day of January, 1880], and offered the plaintiff free access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer.

THE FOURTH SCHEDULE—*continued.*

4. The defendant submits that the plaintiff ought to pay the costs of this suit.

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No. 108.

## EXECUTION OF TRUSTS.

IN THE COURT OF \_\_\_\_\_, AT

*Civil Suit, No.* \_\_\_\_\_.

*A. B.* of \_\_\_\_\_ ... *Plaintiff*,

*against*

*C. D.* of \_\_\_\_\_ the beneficiary [*or*, one  
of the beneficiaries] ... *Defendant.*

*A. B.*, the above-named plaintiff, states as follows:—

1. That he is one of the trustees under an instrument of settlement bearing date on or about the \_\_\_\_\_ day of \_\_\_\_\_ made upon the marriage of *E. F.* and *G. H.*, the father and mother of the defendant [*or*, an instrument of assignment of the estate and effects of *E. F.* for the benefit of *C. D.*, the defendant, and other the creditors of *E. F.*]

2 The said *A. B.* has taken upon himself the burden of the said trust, and is in possession of [*or*, of the proceeds of] the moveable and immoveable property conveyed [*or* assigned] by the before-mentioned deed.

3 The said *C. D.* claims to be entitled to a beneficial interest under the before-mentioned deed.

4. The plaintiff is desirous to account for all the rents and profits, of the said immoveable property [and the proceeds of the sale of the said, *or*, of part of the said, immoveable property, *or*, moveable, *or*, the proceeds of the sale of, *or*, of part of, the said moveable, property, *or*, the profits accruing to the plaintiff as such trustee in the execution of the said trust]; and he prays that the Court will take the accounts of the said trust, and also that the whole of the said trust estate may be administered in the Court for the benefit of the said *C. D.* the defendant, and all other persons who may be interested in such administration, in the presence of the said *C. D.* and such other persons so interested as the Court may direct, or that the said *C. D.* may show good cause to the contrary.

[*N B.*—Where the suit is by a beneficiary, the plaint may be modelled, mutatis mutandis, on the plaint by a legatee.]

*(The Fourth Schedule.)*THE FOURTH SCHEDULE—*continued.*

No 109.

## FORECLOSURE OR SALE.

*(Title)**A B*, the above-named plaintiff, states as follows:—

1. By a mortgage-deed dated the                      day of 18     , a house, with the garden and appurtenances, situated within the jurisdiction of this Court, were conveyed by the defendant to him the plaintiff, his heirs [*or* executors, administrators,] and assigns, for securing the principal sum of Rs                      together with interest thereon at the rate of Rs                      per centum per annum, subject to redemption upon payment by the said defendant of the said principal and interest at a day long since past

2 There is now due from the defendant to the plaintiff the sum of Rs                      for principal and interest on the said mortgage

3 The plaintiff prays (*a*) that the Court will order the defendant to pay him the said sum of Rs.                      with such further interest as may accrue between the filing of the plaint and the day of payment, and also the costs of this suit, on some day to be named by the Court, and in default that the right to redeem the said mortgaged premises may be foreclosed and the plaintiff placed in possession of the same premises, or (*b*) that the said premises may be sold, and the proceeds applied in and towards the payment of the amount of the said principal, interests and costs; and (*c*) that, if such proceeds shall not be sufficient for the payment in full of such amount, the defendant do pay to the plaintiff the amount of the deficiency with interest thereon at the rate of six per cent. per annum until realization; and (*d*) that for that purpose all proper directions may be given and accounts taken by the Court.

No. 110.

## REDEMPTION.

*(Title)**[Alter Form No. 109 thus:—]**Transpose parties and also the facts in paragraph 1.**For paragraph 2 substitute—*

2. There is now due from the plaintiff to the defendant, for principal and interest on the said mortgage, the sum of Rs.                      which the

THE FOURTH SCHEDULE—*continued*

plaintiff is ready and willing to pay to the defendant, of which the defendant, before filing this plaint, had notice.

*For paragraph 3 substitute—*

The plaintiff prays that he may redeem the said premises and that the defendant may be ordered to re-convey the same to him upon payment of the said sum of Rs \_\_\_\_\_ and interest, with such costs (if any), as the Court may order, upon a day to be named by the Court, and that the Court will give all proper directions for the preparation and execution of such re-conveyance and doing such other acts as may be necessary to put him into possession of the said premises, freed from the said mortgage.

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No 111.

SPECIFIC PERFORMANCE (No 1)

(Title)

*A. B.*, the above-named plaintiff, states as follows:—

1. By an agreement dated the \_\_\_\_\_ day of \_\_\_\_\_ and signed by the above-named defendant, *C. D.*, he the said *C. D.* contracted to buy of [*or, sell to*] him certain immoveable property therein described and referred to, for the sum of \_\_\_\_\_ rupees.

2. He has applied to the said *C. D.* specifically to perform the said agreement on his part, but he has not done so.

3 The said *A. B.* has been and still is ready and willing specifically to perform the agreement on his part of which the said *C. D.* has had notice

4. The plaintiff prays that the Court will order the said *C. D.* specifically to perform the said agreement and to do all acts necessary to put the said *A. B.* in full possession of the said property [*or, to accept a conveyance and possession of the said property*] and to pay the costs of the suit.

*[N.B.—In suit for delivery up, to be cancelled, of any agreement, omit paragraphs 2 and 3, and substitute a paragraph stating generally the grounds for requiring the agreement to be delivered up to be cancelled—such as that the plaintiff signed it by mistake, under duress, or by the fraud of the defendant—and alter the prayer according to the relief sought.]*

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No 112

SPECIFIC PERFORMANCE (No. 2)

(Title)

*A. B.*, the above-named plaintiff, states as follows:—

That on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, the defendant

THE FOURTH SCHEDULE—*continued.*

was absolutely entitled to certain moveable property described in the agreement hereto annexed.

2 That on the same day the plaintiff and defendant entered into an agreement, under their hands, a copy of which is hereto annexed.

3. That on the                      day of                      18     , the plaintiff tendered                      rupees to the defendant, and demanded a conveyance of the said property.

4. That on the                      day of                      18     , the plaintiff again demanded such conveyance. [*Or*, That the defendant refused to convey the same to the plaintiff ]

5. That the defendant has not executed such conveyance.

6. That the plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant.

The plaintiff prays judgment—

- (1) that the defendant execute to the plaintiff a sufficient conveyance of the said property [*following the terms of the agreement*];
- (2) for                      rupees compensation for withholding the same.

---

No. 113.

## PARTNERSHIP

(Title)

A. B., the above-named plaintiff, states as follows:—

1. He and the said C D, the defendant, have been for the space of                      years [*or*, months] last past carrying on business together at                      within the jurisdiction of this Court, under certain articles of partnership in writing, signed by them respectively, [*or*, under a certain deed sealed and executed by them respectively, *or*, under a verbal agreement between them, the said plaintiff and defendant].

2. Diverse disputes and differences have arisen between the plaintiff and defendant as such partners whereby it has become impossible to carry on the said business in partnership with advantage to the partners.

3. The plaintiff desires to have the said partnership dissolved and he is ready and willing to bear his share of the debts and obligations of the partnership according to the terms of the said articles [*or*, deed, *or*, agreement]

4 The plaintiff prays the Court to decree a dissolution of the said partnership, and that the accounts of the said partnership-trading may be

THE FOURTH SCHEDULE—*continued*.

taken by the Court, and the assets thereof realized, and that each party may be ordered to pay into Court any balance due from him upon such partnership-account, and that the debts and liabilities of the said partnership may be paid and discharged, and that the costs of the suit may be paid, out of the partnership-assets, and that any balance remaining of such assets, after such payment and discharge, and the payment of the said costs, may be divided between the plaintiff and defendant according to the terms of the said articles [*or, deed, or, agreement*], or that if the said assets shall prove insufficient, the plaintiff and the said defendant may be ordered to contribute in such proportions as shall be just to a fund to be raised for the payment and discharge of such debts, liabilities and costs And to give such other relief as the Court shall think fit.

This plaint was filed by \_\_\_\_\_ of \_\_\_\_\_, pleader \_\_\_\_\_ for the plaintiff [or by \_\_\_\_\_].

[*N B.—In suits for winding-up of any partnership, omit the prayer for dissolution: but instead thereof insert a paragraph stating the fact of the partnership having been dissolved.*]

## No 114

## FORMS OF CONCISE STATEMENTS

[Code of Civil Procedure, section 58]

Money lent.	The plaintiff's claim is _____ rs for money lent [and interest].
Several demands.	The plaintiff's claim is _____ rs whereof _____ rs is for the price of goods sold, and _____ rs. for money lent, and _____ rs for interest.
Rent	The plaintiff's claim is _____ rs. for arrears of rent.
Salary, etc	The plaintiff's claim is _____ rs. for arrears of salary as a clerk [ <i>or as the case may be</i> ]
Interest	The plaintiff's claim is _____ rs. for interest upon money lent.
General average	The plaintiff's claim is _____ rs. for a general average contribution.
Freight, etc	The plaintiff's claim is _____ rs for freight and demurrage
Banker's balance	The plaintiff's claim is _____ rs for money deposited with the defendant as a banker.
Fees, etc, as pleader.	The plaintiff's claim is _____ rs for fees for work done [and _____ money expended] as a pleader.
Commission	The plaintiff's claim is _____ rs for commission earned as [ <i>state character—as auctioneer, cotton-broker, etc</i> ]
Medical attendance	The plaintiff's claim is _____ rs. for medical attendance.

THE FOURTH SCHEDULE—*continued*

The plaintiff's claim is	rs for a return of premium paid upon	Return of premium
policies of insurance.		
The plaintiff's claim is	rs for the warehousing of goods.	Warehouse rent
The plaintiff's claim is	rs for the carriage of goods by railway	Carriage of goods
The plaintiff's claim is	rs for the use and occupation of a house.	Use and occupation of house
The plaintiff's claim is	rs for the hire of [furniture]	Fine of goods
The plaintiff's claim is	rs for work done as a [surveyor].	Work done
The plaintiff's claim is	rs for board and lodging	Bond and lodging
The plaintiff's claim is	rs. for the [board, lodging and] tuition of	Schooling
X. Y.		
The plaintiff's claim is	rs for money received by the defendant as	Money received
pleader [ <i>or</i> factor, <i>or</i> collector, <i>or, etc</i> ] of the plaintiff		
The plaintiff's claim is	rs for fees received by the defendant under	Fees of office
colour of the office of	.	
The plaintiff's claim is	rs for a return of money overcharged for	Money over-
the carriage of goods by railway		paid
The plaintiff's claim is	rs. for a return of fees overcharged by the	
defendant as		
The plaintiff's claim is	rs. for a return of money deposited with	Return of money by stake-holder.
the defendant as stake-holder		
The plaintiff's claim is	rs for money entrusted to the defendant	Money won from stake-holder
as stake-holder, and become payable to plaintiff		
The plaintiff's claim is	rs for a return of money entrusted to the	Money entrusted to agent
defendant as agent of the plaintiff		
The plaintiff's claim is	rs for a return of money obtained from	Money obtained by fraud
the plaintiff by fraud		
The plaintiff's claim is	rs for a return of money paid to the de-	Money paid by mistake
fendant by mistake		
The plaintiff's claim is	rs for a return of money paid to the de-	Money paid for consideration which has failed
fendant for [work to be done, <i>or</i> , work left undone; or a bill to be taken up, <i>or</i> , a bill not taken up; <i>or, etc.</i> ].		
The plaintiff's claim is	rs. for a return of money paid as a deposit	
upon shares to be allotted		
The plaintiff's claim is	rs for money paid for the defendant as	Money paid by surety for defendant.
his surety.		

THE FOURTH SCHEDULE—*continued.*

Rent paid	The plaintiff's claim is	rs. for money paid for rent due by the defendant.
Money paid on accommodation bill	The plaintiff's claim is	rs. upon a bill of exchange accepted [ <i>or indorsed</i> ] for the defendant's accommodation.
Contribution by surety	The plaintiff's claim is	rs. for a contribution in respect of money paid by the plaintiff as surety.
By co-debtor	The plaintiff's claim is	rs. for a contribution in respect of a joint debt of the plaintiff and the defendant, paid by the plaintiff.
Money paid for calls	The plaintiff's claim is	rs. for money paid for calls upon shares, against which the defendant was bound to indemnify the plaintiff.
Money payable under award.	The plaintiff's claim is	rs. for money payable under an award.
Life-policy	The plaintiff's claim is	rs. upon a policy of insurance upon the life of X. Y., deceased.
Money-bond	The plaintiff's claim is	rs. upon a bond to secure payment of rs. and interest.
Foreign judgment	The plaintiff's claim is	rs. upon a judgment of the Court in [the Empire of Russia].
Bills of exchange, etc	The plaintiff's claim is	rs. upon a cheque drawn by the defendant.
	The plaintiff's claim is	rs. upon a bill of exchange accepted [ <i>or drawn, or indorsed</i> ] by the defendant.
	The plaintiff's claim is	rs. upon a promissory note made [ <i>or indorsed</i> ] by the defendant.
	The plaintiff's claim is	rs. against the defendant, A. B., as acceptor, and against the defendant, C. D., as drawer [ <i>or indorser</i> ] of a bill of exchange.
Surety.	The plaintiff's claim is	rs. against the defendant as surety for the price of goods sold.
	The plaintiff's claim is	rs. against the defendant, A. B., as principal, and against the defendant, C. D., as surety, for the price of goods sold [ <i>or for arrears of rent, or for money lent or for money received by the defendant, A. B., as traveller for the plaintiff, or, etc</i> ].
Calls	The plaintiff's claim is	rs. for calls upon shares.

*Indorsement for costs, etc.*

[*Add to the above forms*] and rs. for costs; and if the amount claimed be paid to the plaintiff or his pleader within days [*or if the summons is to be served out of the jurisdiction, insert the time for*

THE FOURTH SCHEDULE—*continued.*

*appearance limited by the order*] from the service hereof, further proceedings will be stayed.

*Damages and other Claims.*

The plaintiff's claim is for damages for breach of a contract to employ Agent, etc the plaintiff as traveller.

The plaintiff's claim is for damages for wrongful dismissal from the defendant's employment as traveller [and rs. for arrears of wages].

The plaintiff's claim is for damages for the defendant's wrongfully quitting the plaintiff's employment as manager.

The plaintiff's claim is for damages for breach of duty as factor [*or, etc.*] of the plaintiff [and rs. for money received as factor, *or, etc.*].

The plaintiff's claim is for damages for breach of the terms of a deed of apprenticeship of X. Y. to the defendant [*or plaintiff*]. Apprentices

The plaintiff's claim is for damages for non-compliance with the award of X. Y. Arbitration

The plaintiff's claim is for damages for assault [and false imprisonment, and for malicious prosecution]. Assault, etc

The plaintiff's claim is for damages for assault and false imprisonment of the plaintiff, C. D. By husband and wife

The plaintiff's claim is for damages for assault by the defendant, C. D. Against husband and wife

The plaintiff's claim is for damages for injury by the defendant's negligence as pleader of the plaintiff. Pleader

The plaintiff's claim is for damages for negligence in the custody of goods [and for wrongfully detaining the same]. Bailment

The plaintiff's claim is for damages for negligence in the keeping of goods pawned [and for wrongfully detaining the same]. Pledge

The plaintiff's claim is for damages for negligence in the custody of furniture [*or, a carriage*] lent on hire [and for wrongfully, *etc.*]. Hire

The plaintiff's claim is for damages for wrongfully neglecting [*or refusing*] to pay the plaintiff's cheque. Banker

The plaintiff's claim is for damages for breach of a contract to accept the plaintiff's drafts. Bill

The plaintiff's claim is upon a bond conditioned not to carry on the trade of a Bond.

THE FOURTH SCHEDULE—*continued*.

Carrier	<p>The plaintiff's claim is for damages for refusing to carry the plaintiff's goods by railway</p> <p>The plaintiff's claim is for damages for refusing to carry the plaintiff by railway.</p> <p>The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of coals by railway</p> <p>The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of machinery by sea.</p>
Charter-party	The plaintiff's claim is for damages for breach of charter-party of ship [ <i>Mary</i> ].
Claim for return of goods; damages	The plaintiff's claim is for return of household furniture, [ <i>or, etc.,</i> ] or their value, and for damages for detaining the same.
Damages for depriving of goods	The plaintiff's claim is for wrongfully depriving plaintiff of goods, household furniture, etc.
Defamation.	<p>The plaintiff's claim is for damages for libel.</p> <p>The plaintiff's claim is for damages for slander.</p>
Wrongful distress	The plaintiff's claim is for damages for improperly distraining.
[ <i>This Form shall be sufficient whether the distress complained of be wrongful or excessive or irregular.</i> ]	
Ejectment	<p>The plaintiff's claim is to recover possession of a house No.            in</p> <p>Street, or of a farm called Blackacre, situate in the</p> <p>of            in the            of            .</p>
To establish title and recover rents	The plaintiff's claim is to establish his title to [ <i>here describe property</i> ] and to recover the rents thereof.
[ <i>The two previous Forms may be combined.</i> ]	
Fishery.	The plaintiff's claim is for damages for infringement of the plaintiff's right of fishing.
Fraud.	<p>The plaintiff's claim is for damages for fraudulent misrepresentation on the sale of a horse [<i>or a business, or shares, or, etc.</i>].</p> <p>The plaintiff's claim is for damages for fraudulent misrepresentation of the credit of <i>A. B.</i></p>
Guarantee	<p>The plaintiff's claim is for damages for breach of a contract of guarantee for <i>A. B.</i></p> <p>The plaintiff's claim is for damages for breach of a contract to indemnify the plaintiff as the defendant's agent to distrain.</p>

THE FOURTH SCHEDULE—*continued*.

The plaintiff's claim is for a loss under a policy upon the ship [*Royal Insurance Charter*], and freight of cargo [*or for return of premiums*]

[*This Form shall be sufficient whether the loss claimed be total or partial*]

The plaintiff's claim is for a loss under a policy of fire-insurance upon house and furniture. Fire-insurance

The plaintiff's claim is for damages for breach of a contract to insure a house

The plaintiff's claim is for damages for breach of a contract to keep a house in repair Landlord and tenant.

The plaintiff's claim is for damages for breaches of covenants contained in a lease of a farm

The plaintiff's claim is for damages for injury to the plaintiff from the defendant's negligence as a medical man. Medical man

The plaintiff's claim is for damages for injury by the defendant's dog Mischievous animal

The plaintiff's claim is for damages for injury to the plaintiff by the negligent driving of the defendant or his servants. Negligence

The plaintiff's claim is for damages for injury to the plaintiff while a passenger on the defendant's railway by the negligence of the defendant's servants

The plaintiff's claim is for damages for injury to the plaintiff at the defendant's railway-station from the defective condition of the station.

The plaintiff's claim is as executor of *A. B*, deceased, for damages for the death of the said *A. B*, from injuries received while a passenger on the defendant's railway, by the negligence of the defendant's servants.

The plaintiff's claim is for damages for breach of promise of marriage

The plaintiff's claim is for damages for breach of contract to accept and pay for goods Promise of marriage.  
Sale of goods

The plaintiff's claim is for damages for non-delivery [*or short delivery, or defective quality, or other breach of contract of sale*] of cotton [*or etc.*]

The plaintiff's claim is for damages for breach of warranty of a horse.

The plaintiff's claim is for damages for breach of a contract to sell [*or purchase*] land. Sale of land

The plaintiff's claim is for damages for breach of a contract to let [*or take*] a house

The plaintiff's claim is for damages for breach of a contract to sell [*or purchase*] the lease, with good-will, fixtures and stock-in-trade of a public house.

THE FOURTH SCHEDULE—*continued*.

The plaintiff's claim is for damages for breach of covenant for title [or for quiet enjoyment, *or, etc.*] in a conveyance of land.

Trespass  
on land.

The plaintiff's claim is for damages for wrongfully entering the plaintiff's land and drawing water from his well [or cutting his grass, or felling his timber, or pulling down his fences, or removing his gate, or using his road or path, or crossing his field, or depositing sand there, or carrying away gravel from thence, or carrying away stones from his river.]

Support

The plaintiff's claim is for damages for wrongfully taking away the support of plaintiff's land [or house, or mine].

Way

The plaintiff's claim is for damages for wrongfully obstructing a way [public highway, or private way].

Water-  
course, etc

The plaintiff's claim is for damages for wrongfully diverting [or obstructing, or polluting, or diverting water from] a water-course.

The plaintiff's claim is for damages for wrongfully discharging water upon the plaintiff's land [or into the plaintiff's mine].

The plaintiff's claim is for damages for wrongfully obstructing the plaintiff's use of a well.

Pasture

The plaintiff's claim is for damages for the infringement of the plaintiff's right of pasture.

[*This Form shall be sufficient whatever the nature of the right to pasture be.*]

Light.

The plaintiff's claim is for damages for obstructing the access of light to plaintiff's house.

Patent

The plaintiff's claim is for damages for the infringement of the plaintiff's patent.

Copyright

The plaintiff's claim is for damages for the infringement of the plaintiff's copyright.

Trademark

The plaintiff's claim is for damages for wrongfully using [or imitating] the plaintiff's trademark.

Work

The plaintiff's claim is for damages for breach of a contract to build a ship [or, to repair a house, *etc.*].

The plaintiff's claim is for damages for breach of a contract to employ the plaintiff to build a ship, *etc.*

Nuisance

The plaintiff's claim is for damages to his house, trees, crops, *etc.*, caused by noxious vapours from the defendant's factory, [or, *etc.*].

The plaintiff's claim is for damages from nuisance by noise from the defendant's works [or stables, or, *etc.*].

Injunction.

[*Add to indorsement*]:—and for an injunction.

THE FOURTH SCHEDULE—*continued*

[*Add to indorsement where claim is to land, or to establish title, or both*]:—

and for mesne profits.

and for an account of rents or arrears of rent.

and for breach of covenant for [repairs]

Mesne  
profits  
Arrears of  
rent  
Breach of  
covenant.

*1. Creditor to administer Estate*

The plaintiff's claim is as a creditor of *X Y*, of \_\_\_\_\_, deceased, to have the moveable and immoveable property of the said *X Y*. administered The defendant, *C. D*, is sued as the administrator of the said *X. Y*. [and the defendants *E. F.* and *G. H.* as his co-heirs at law]

*2 Legatee to administer Estate.*

The plaintiff's claim is as a legatee under the will dated the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, of *X. Y*, deceased, to have the moveable and immoveable property of the said *X. Y* administered The defendant *C D*. is sued as the executor of the said *X. Y*. [and the defendants *E. F.* and *G. H.*, as his devisees].

*3. Partnership*

The plaintiff's claim is to have an account taken of the partnership dealings between the plaintiff and defendant [under articles of partnership dated the \_\_\_\_\_ day of \_\_\_\_\_], and to have the affairs of the partnership wound up.

*4 By Mortgagee.*

The plaintiff's claim is to have an account taken of what is due to him for principal, interest and costs on a mortgage dated the \_\_\_\_\_ day of \_\_\_\_\_, made between [*parties*] [*or*, by deposit of title-deeds], and that the mortgage may be enforced by foreclosure or sale.

*5. By Mortgagor.*

The plaintiff's claim is to have an account taken of what, if anything, is due on a mortgage dated \_\_\_\_\_ and made between [*parties*], and to redeem the property comprised therein.

*6. Raising Portions*

The plaintiff's claim is that the sum of \_\_\_\_\_ Rs. which by a deed of settlement, dated \_\_\_\_\_, was provided for the portions of the younger children of \_\_\_\_\_, may be raised.

THE FOURTH SCHEDULE—*continued.*7. *Execution of Trusts.*

The plaintiff's claim is to have the trusts of an indenture dated and made between [parties] carried into execution.

8. *Cancellation or Rectification.*

The plaintiff's claim is to have a deed dated and made between [parties] set aside or rectified

9. *Specific Performance.*

The plaintiff's claim is for specific performance of an agreement dated the day of for the sale by the plaintiff to the defendant of certain [freehold] hereditaments at .

---

No. 115.

## PROBATE.

1 *By an executor or legatee propounding a will in solemn form.*

The plaintiff claims to be executor of the last will dated the day of of C D, late of , deceased, who died on the day of , and to have the said will established. This summons is issued against you as one of the next-of-kin of the said deceased [or, as the case may be]

2. *By an executor or legatee of a former will, or a next-of-kin, etc., of the deceased, seeking to obtain the revocation of a probate granted in common from.*

The plaintiff claims to be executor of the last will, dated the day of , of C D., late of , deceased, who died on the day of and to have the probate of a pretended will of the said deceased, dated the day of , revoked. This summons is issued against you as the executor of the said pretended will [or, as the case may be]

3. *By an executor or legatee of a will when letters of administration have been granted as in an intestacy*

The plaintiff claims to be executor of the last will of C. D., late of , deceased, who died on the day of , dated the day of .

The plaintiff claims that the grant of letters of administration of the estate of the said deceased obtained by you should be revoked, and probate of the said will granted to him.

THE FOURTH SCHEDULE—*continued.*

4 *By a person claiming a grant of administration as a next-of-kin of the deceased, but whose interest as next-of-kin is disputed.*

The plaintiff claims to be the brother and sole next-of-kin of *C. D.*, of  
                    , deceased, who died on the                      day of                      ,  
intestate, and to have as such a grant of administration to the personal  
estate of the said intestate. This writ is issued against you because you  
have entered a caveat, and have alleged that you are the sole next-of-kin  
of the deceased [*or, as the case may be*].



(The Fourth Schedule.)

THE FOURTH SCHEDULE—*continued*.

No. 117.

## SUMMONS FOR DISPOSAL OF SUIT.

Sections 64 and 68 of the Code of Civil Procedure.

(Title.)

To

dwelling at

WHEREAS

has instituted a suit against you for

NOTICE —1 Should you apprehend your witnesses will not attend of their own accord, you can have summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call upon the witness to produce, on applying to the Court at any time before the trial, on your depositing their necessary subsistence-money

2 If you admit the demand, you should pay the money into Court with the costs of the suit, to avoid the summary execution of the decree, which may be against your person or property, or both, if necessary.

you are hereby summoned to appear in this Court in person or by a duly authorized pleader of the Court, duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions, on the day of 18 , at o'clock in the forenoon, to answer the above-named plaintiff; and, as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce all your witnesses on that day; and you are hereby required to take notice that, in default of your appearance on the day before-mentioned, the suit will be heard and determined in your absence; and you will bring with you, or send by your pleader,

, which the plaintiff desires to inspect, and any documents on which you intend to rely in support of your defence.

GIVEN under my hand and the seal of the Court, this day of 18

L. S.

Judge.

NOTE.—If written statements are required, say—You are [or such a party is, as the case may be] required to put in a written statement by the day of .

THE FOURTH SCHEDULE—*continued.*

No. 118.

## SUMMONS FOR SETTLEMENT OF ISSUES.

Sections 64 and 68 of the Code of Civil Procedure.

(Title)

To

dwelling at

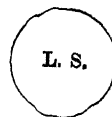
NOTICE —1. Should you apprehend your witnesses will not attend of their own accord, you can have summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call on the witness to produce, on applying to the Court at any time before the trial, on your depositing their necessary subsistence-money

2. If you admit the demand, you should pay the money into Court with the costs of the suits, to avoid the summary execution of the decree, which may be against your person or property, or both, if necessary.

## WHEREAS

has instituted a suit against you for ,  
you are hereby summoned to appear in this Court in person or by a duly authorized pleader of the Court, duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions, on the day of 18 , at o'clock in the forenoon, to answer the above-named plaintiff; and you are hereby required to notice that, in default of your appearance on the day before-mentioned, the issues will be settled in your absence; and you will bring with you, or send by your pleader, , which the plaintiff desires to inspect and any document on which you intend to rely in support of your defence.

GIVEN under my hand and the seal of the Court, this day  
of 18 .



Judge.

NOTE —If written statements are required, say—You are [or such a party is, as the case may be] required to put in a written statement by the day of ,

(The Fourth Schedule.)

THE FOURTH SCHEDULE—*continued.*

No. 119.

SUMMONS TO APPEAR.

Section 68 of the Code of Civil Procedure.

*No. of Suit.*

IN THE COURT OF

AT

Plaintiff.

Defendant.

To

*(Name, description and address)*

WHEREAS [*here enter the name, description and address of the plaintiff*] has instituted a suit in this Court against you [*here state the particulars of the claim as in the register*]: you are hereby summoned to appear in this Court in person on the                      day of                      at                      in the forenoon [*if not specially required to appear in person, state—"in person or by a pleader of the Court, duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions"*] to answer the above-named plaintiff [*if the summons be for the final disposal of the suit, this further direction shall be added here: "and as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce all your witnesses on that day"*]; and you are hereby required to take notice that, in default of your appearance on the day before-mentioned, the suit will be heard and determined in your absence; and you will bring with you (or send by your agent) [*here mention any document the production of which may be required by the plaintiff*], which the plaintiff desires to inspect, and any document on which you intend to rely in support of your defence.

GIVEN under my hand and the seal of the Court, this                      day  
of                      18

L. S.

*Judge.*

2 M 2

(The Fourth Schedule)

## THE FOURTH SCHEDULE—continued.

No. 120.

ORDER FOR TRANSMISSION OF SUMMONS FOR SERVICE IN THE JURISDICTION  
OF ANOTHER COURT.

Section 85 of the Code of Civil Procedure.

IN THE COURT OF AT .

Civil Suit, No. of 18 .

A B of

against

C. D. of

The day of 18 .

WHEREAS it is stated in the plaint that , the defendant in  
the above suit , is at present residing in ,  
but that the right to sue accrued within the jurisdiction of this Court it is  
ordered that a summons returnable on the day of  
18 be forwarded for service on the said defendant to the Court of  
with a duplicate of this proceeding.

L S.

Judge.

No 121.

## TO ACCOMPANY RETURNS OF SUMMONS OF ANOTHER COURT.

Section 85 of the Code of Civil Procedure.

IN THE COURT OF AT .

Civil Suit, No. of 18 .

The day of 18 .

A B of

against

C. D. of

Read the proceeding from the forwarding  
for service on in  
civil No. of that Court.

THE FOURTH SCHEDULE—*continued*.

Read Bailiff's endorsement on the back of the process stating that the  
 and proof of the above having been duly taken by me  
 on the [oath *or*] affirmation of and  
 it is ordered that the be returned to the  
 with a copy of this proceeding.

L. S.

*Judge.*

NOTE.—This form will be applicable to process other than summons, the service of which may have to be effected in the same manner

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No. 122.

## DEFENDANT'S STATEMENT.

Section 110 of the Code of Civil Procedure.

(*Title.*)

I, the undersigned defendant [*or one of the defendants*], disclaim all interest under the will of the said *E. F.* in the plaint, named [*or, as heir-at-law, or as next-of-kin, or one of the next-of-kin, of E. F., deceased, in the said plaint named*].

*Or, I, the undersigned defendant, state that I admit [or deny] [here repeat in the language of the plaint the statements admitted or denied].*

*Or, I, the undersigned defendant, submit that, upon the facts stated in the plaint, it does not appear that there is any agreement which can be legally enforced [or, that it appears upon the said plaint that I am jointly liable with one E. F., who is not a party to the suit, and not severally liable as by the plaint appears, or, that it appears by the said plaint that G. H. should have been a joint-plaintiff with the said A. B. in the said suit, or as the case may be].*

*Or, that the plaintiff has conveyed his interest in the said mortgage [or right to redeem] to one I. J., [or that I have conveyed or assigned to H. L. by way of further charge for securing the sum of Rs. the right to redeem in the property sought by the suit to be foreclosed].*

*Or, that since the dissolution of the partnership the plaintiff has executed an instrument, whereby the plaintiff covenants to discharge all debts and*

THE FOURTH SCHEDULE—*continued.*

liabilities of the partnership, and generally to release me from all claims and liabilities either by or to himself and others in respect of the said partnership-trading [*or as the case may be*].

Signed C. D.,  
Defendant.

No 123.

## INTERROGATORIES

Section 121 of the Code of Civil Procedure.

IN THE COURT OF AT .

Civil Suit, No of 18 .

A B.

*against*

C. D., E F and G H.

Interrogatories on behalf of the above-named A. B. [*or C. D.*] for the examination of the above-named E F. and G. H. [*or A. B.*]

1. Did not, etc.

2. Has not, etc.

The defendant E. F., is required to answer the interrogatories numbered  
The defendant G. H. is required to answer the interrogatories numbered

No. 124.

## FORM OF NOTICE TO PRODUCE DOCUMENTS.

Section 131 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B.

*against*

C. D.

Take notice that the plaintiff [*or defendant*] requires you to produce for his inspection the following documents referred to in your plaint [*or written statement, or affidavit*], dated the day of

18 .

*(The Fourth Schedule.)*THE FOURTH SCHEDULE—*continued.**Describe documents required.*

To Z., X. Y., Pleader for the plaintiff [*or the defendant*].  
 Pleader for the defendant [*or plaintiff*].

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No. 125.

## SUMMONS TO ATTEND AND GIVE EVIDENCE.

Sections 159 and 163 of the Code of Civil Procedure.

*(Title.)*

To

WHEREAS your attendance is required to  
 on behalf of the \_\_\_\_\_ in the above cause, you are hereby  
 required [personally to appear before this Court] on the \_\_\_\_\_ day  
 of \_\_\_\_\_ 18\_\_\_\_, at the hour of \_\_\_\_\_ A.M. [and] to bring with  
 you or to send to this Court

A sum of Rs. \_\_\_\_\_, being your travelling and other expenses  
 and subsistence-allowance for one day, is herewith sent. If you do not  
 comply with this order, you will be subject to the consequence of non-  
 attendance laid down in the Code of Civil Procedure, section 170.

NOTICE—(1) If you are summoned only to produce a document and not  
 to give evidence, you shall be deemed to have complied with the summons  
 if you cause such document to be produced in this Court on the day, and  
 hour aforesaid.

(2) If you are to be detained beyond the day aforesaid a sum of  
 Rs. \_\_\_\_\_ will be tendered to you for each day's attendance beyond  
 the day specified.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day  
 of \_\_\_\_\_ 18\_\_\_\_.

L. S.

*Judge.*

THE FOURTH SCHEDULE—*continued.*

No. 126.

### Another Form.

No. of Surt.

IN THE COURT OF   AT

Plaintiff.

Defendant.

To

[Name, description and address]

You are hereby summoned to appear in this Court in person on the  
day of                      at                      in the forenoon,  
to give evidence on behalf of the plaintiff [*or the defendant*] in the above-  
mentioned suit, and to produce [*here describe with convenient certainty any  
document the production of which may be required. If the summons be only  
to give evidence, or if it be only to produce a document, it must be ex-  
pressed accordingly*], and you are not to depart thence until you have been  
examined [*or have produced the document*] and the Court has risen, or  
unless you have obtained the leave of the Court

## FORMS OF DECREES.

No. 127.

### SIMPLE MONEY-DECREE.

(Title.)

Claim for

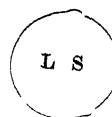
THIS cause coming on \_\_\_\_\_ for final disposal before \_\_\_\_\_  
in the presence of \_\_\_\_\_ on the  
part of the plaintiff, and \_\_\_\_\_ on the part of the defendant,  
it is ordered that the \_\_\_\_\_ do pay to \_\_\_\_\_ the  
\_\_\_\_\_ the sum of Rs \_\_\_\_\_, with interest  
thereon at the rate of \_\_\_\_\_ per cent. per \_\_\_\_\_ from  
\_\_\_\_\_ to the date of realization of the said sum, and do also pay to  
the \_\_\_\_\_ the costs of this suit as taxed by the officer  
of the Court, with interest thereon at the rate aforesaid from the date of  
**taxation to the date of realization.**

## THE FOURTH SCHEDULE—continued.

## Costs of suit.

PLAINTIFF			DEPENDANT		
	Rs.	A. P.		Rs.	A. P.
1. Stamp for plaint . . .			Stamp for power . . .		
2. Do. for power . . .			Do. petition . . .		
3. Do. for exhibits . . .			Pleader's fee . . .		
4. Pleader's fees on Rs. . .			Subsistence for witnesses . . .		
5. Translation-fee . . .			Service of process . . .		
6. Subsistence for witness for attendance. . .			Translation-fee . . .		
7. Commissioner's fee . . .			Commissioner's fee . . .		
8. Service of process . . .					
9 etc. . . . .					
TOTAL . . .			TOTAL . . .		

GIVEN under my hand and the seal of the Court, this                      day  
of                      18                      .



*Judge.*

No. 128

DECREE FOR SALE IN A SUIT BY A MORTGAGEE OR PERSON ENTITLED TO  
A LIEN

(Title)

IT is ordered that it be referred to the Registrar [*or Taxing Officer*] to take an account of what is due to the plaintiff for principal and interest on the mortgage [*or lien*] mentioned in the plaint, and to tax the plaintiff's costs of this suit, and that the Registrar [*or Taxing Officer*] do declare in Court on the                      day of                      what he shall find to be due for principal and interest as aforesaid, and for costs, And upon the defendant paying into Court what shall be certified to be due to the plaintiff for principal and interest as aforesaid, together with the said costs, within

THE FOURTH SCHEDULE—*continued*.

six months from the date of declaring in Court the amount so due, it is ordered that the plaintiff do re-convey the said mortgaged premises free and clear from all incumbrances done by him, or any claiming by, from or under, him, and do deliver up to the defendant or to such person as he appoints all documents in his custody, or power relating thereto, and that upon such re-conveyance being made, and documents being delivered up, the Registrar [*or Taxing Officer*] shall pay out to the plaintiff the said sum so paid in as aforesaid for principal, interest and costs; but in default of the defendant paying into Court such principal, interest and costs as aforesaid by the time aforesaid, then it is ordered that the said mortgaged premises [*or the premises subject to the said lien*] be sold with the approbation of the Registrar [*or Taxing Officer*]. And it is ordered that the proceeds of such sale (after defraying thereout the expenses of the sale) be paid into Court, to the end that the same may be duly applied in payment of what shall be found due to the plaintiff for principal, interest and costs as aforesaid, and that the balance (if any) shall be paid to the defendant or other person entitled to receive the same.

## No. 129.

<sup>1</sup> FINAL DECREE FOR FORECLOSURE.

(Title.)

WHEREAS it appears to the Court that the defendant has not paid into Court the sum \_\_\_\_\_ which was on the \_\_\_\_\_ day of \_\_\_\_\_ last declared in Court to be due to the plaintiff for principal and interest upon the mortgage in the plaint mentioned, and for costs, pursuant to the order made in this suit on the \_\_\_\_\_ day of \_\_\_\_\_ last, and that the period of six months has elapsed since the said day of \_\_\_\_\_.

It is ordered that the defendant do stand absolutely debarred of all right to redeem the said mortgaged premises.

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<sup>1</sup>In No 129, substitute the words "Decree absolute" for "Final Decree" in places to which the Transfer of Property Act, 1882, extends, *see* Act IV of 1882, s 87, and s 3 of this Act, printed, *supra*, pp 40 & 264, respectively

## (The Fourth Schedule.)

THE FOURTH SCHEDULE—*continued.*

No. 130.

## PRELIMINARY ORDER—ADMINISTRATION-SUIT.

Section 213 of the Code of Civil Procedure.

(Title.)

It is ordered that the following accounts and inquiries be taken and made; that is to say:—

*In creditor's suit—*

1. That an account be taken of what is due to the plaintiff and all other the creditors of the deceased.

*In suits by legatees—*

2. An account be taken of the legacies given by the testator's will.

*In suits by next-of-kin—*

An inquiry be made and account taken of what, or of what share, if any, the plaintiff is entitled to as next-of-kin [or one of the next-of-kin] of the intestate.

[*After the first paragraph, the Order will, where necessary, order, in a creditor's suit, inquiry and accounts for legatees, heirs-at-law and next-of-kin. In suits by claimants other than creditors, after the first paragraph, in all cases, an order to inquire and take an account of creditors will follow the first paragraphs and such of the others as may be necessary will follow, omitting the first formal words. The form is continued as in a creditor's suit.*]

3. An account of the funeral and testamentary expenses.

4. An account of the moveable property of the deceased come to the hands of the defendant, or to the hands of any other person by his order or for his use.

5. An inquiry what part (if any) of the moveable property of the deceased is outstanding and undisposed of.

6. And it is further ordered that the defendant do, on or before the  
day of                      next, pay into Court all sums of money  
which shall be found to have come to his hands, or to the hands of any  
person by his order or to his use.

7. And that if the *Registrar* shall find it necessary for carrying out the objects of the suit to sell any part of the moveable property of the deceased, that the same be sold accordingly, and the proceeds paid into Court.

THE FOURTH SCHEDULE—*continued*

8. And that Mr. *E F* be Receiver in the suit (*or proceeding*), and receive and get in all outstanding debts and outstanding moveable property of the deceased, and pay the same into the hands of the Registrar (and shall give security by bond for the due performance of his duties to the amount of                      rupees).

9 And it is further ordered that if the moveable property of the deceased be found insufficient for carrying out the objects of the suit, then the following further inquiries be made, and accounts taken, that is to say—

- (a) an inquiry what immoveable property the deceased was seized of or entitled to at the time of his death;
- (b) an inquiry what are the incumbrances (if any) affecting the immoveable property of the deceased, or any part thereof;
- (c) an account, so far as possible, of what is due to the several incumbrancers, and could include a statement of the priorities of such of the incumbrancers as shall consent to the sale hereinafter directed.

10. And that the immoveable property of the deceased, or so much thereof as shall be necessary to make up the fund in Court sufficient to carry out object of the suit, be sold with the approbation of the Judge, free from incumbrances (if any) of such incumbrancers as shall consent to the sale, and subject to the incumbrances of such of them as shall not consent.

11. And it is ordered that *G. H.* shall have the conduct of the sale of the immoveable property, and shall prepare the conditions and contracts of sale subject to the approval of the Registrar, and that in case any doubt or difficulty shall arise the papers shall be submitted to the Judge to settle.

12. And it is further ordered that, for the purpose of the inquiries hereinbefore directed, the Registrar shall advertise in the newspapers according to the practice of the Court, or shall make such inquiries in any other way which shall appear to the Registrar to give the most useful publicity to such inquiries

13. And it is ordered that the above inquiries and accounts be made and taken, and that all other acts ordered to be done be completed, before the                      day of                      , and that the Registrar do certify the result of the inquiries, and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the                      day of

THE FOURTH SCHEDULE—*continued.*

14. And, lastly, it is ordered, that this suit [*or matter*] stand adjourned for making final decree to the                      day of

[*Such part only of this order is to be used as is applicable to the particular case.*]

## No. 131.

## FINAL DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE

## Section 213 of the Code of Civil Procedure.

1. It is ordered that the defendant                      do, on or before the day of                      , pay into Court the sum of Rs.                      , the balance by the said certificate found to be due from the said defendant on account of the estate of                      , the testator and also the sum of Rs.                      for interest, at the rate of Rs.                      per centum per annum, from the                      day of                      to the                      day of                      , amounting together to the sum of Rs.                      .

2. Let the Registrar [*or Taxing Officer*] of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said costs, when so taxed, be paid out of the said sum of Rs.                      ordered to be paid into Court as aforesaid, as follows:—

(a)—The costs of the plaintiff to Mr.                      , his attorney [*or pleader*], and the costs of the defendant to Mr.                      , his attorney [*or pleader*].

(b)—And (*if any debts are due*) with the residue of the said sum of Rs.                      after payment of the plaintiff's and defendant's costs as aforesaid, let the sums, found to be owing to the several creditors mentioned in the                      schedule to the Registrar's certificate together with subsequent interest on such of the debts as bear interest, be paid; and after making such payments, let the amount coming to the several legatees mentioned in the                      schedule, together with subsequent interest (to be verified as aforesaid) be paid to them.

3. And if there should then be any residue, let the same be paid to the residuary legatee.

THE FOURTH SCHEDULE—*continued*.

DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE, WHERE AN EXECUTOR  
IS HELD PERSONALLY LIABLE FOR THE PAYMENT OF LEGACIES.

Section 213 of the Code of Civil Procedure.

1. Declare that the defendant is personally liable to pay the legacy of Rs.                      bequeathed to the plaintiff;
2. And it is ordered that an account be taken of what is due for principal and interest on the said legacy;
3. And it is also ordered that the defendant do, within                      weeks after the date of the Registrar's certificate, pay to the plaintiff the amount of what the Registrar shall certify to be due for principal and interest;
4. And it is ordered that the defendant do pay the plaintiff his costs of suit, the same to be taxed in case the parties differ.

---

FINAL DECREE IN AN ADMINISTRATION-SUIT BY NEXT-OF-KIN.

Section 213 of the Code of Civil Procedure.

1. Let the Registrar of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said plaintiff's costs, when so taxed, be paid by the defendant to the plaintiff out of the sum of Rs.                      , the balance by the said certificate found to be due from the said defendant on account of the personal estate of *E F*, the intestate, within one week after the taxation of the said costs by the said Registrar, and let the defendant retain for her own use out of such sum her costs, when taxed.
2. And it is ordered that the residue of the said sum of Rs.                      , after payment of the plaintiff's and defendant's costs as aforesaid, be paid and applied by defendant as follows:—
  - (a) Let the defendant within one week after the taxation of the said costs by the Registrar as aforesaid, pay one-third share of the said residue to the plaintiffs *A. B.*, and *C*, his wife, in her right, as the sister and one of the next-of-kin of the said *E F*, the intestate
  - (b) Let the defendant retain for her own use one other third share of the said residue, as the mother and one other of the next-of-kin of the said *E F*, the intestate.
  - (c) And let the defendant, within one week after the taxation of the said costs by the Registrar as aforesaid, pay the remaining

THE FOURTH SCHEDULE—*continued.*

one-third share of the said residue to *G. H.*, as the brother  
and the other next-of-kin of the said *E. F.*, the intestate.

---

No. 132.

ORDER—DISSOLUTION OF PARTNERSHIP.

Section 215 of the Code of Civil Procedure.

(*Title.*)

It is declared that the partnership in the plaint mentioned between the plaintiff and defendant ought to stand dissolved as from the day of                      and it is ordered that the dissolution thereof as from that day be advertised in the                      Gazette, etc.

And it is ordered that                      be the Receiver of the partnership-estate and effects in this suit, and do get in all the outstanding book-debts and claims of the partnership.

And it is ordered that the following accounts be taken :—

1. An account of the credits, property and effects now belonging to the said partnership,
2. An account of the debts and liabilities of the said partnership ;
3. An account of all dealings and transactions between the plaintiff and defendant, from the foot of the settled account exhibited in this suit and marked (A), and not disturbing any subsequent settled accounts.

And it is ordered that the goodwill of the business heretofore carried on by the plaintiff and defendant as in the plaint mentioned, and the stock-in-trade, be sold on the premises and that the Registrar may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties is to be at liberty to bid at the sale

And it is ordered that the above accounts be taken, and all the other acts required to be done be completed, before the                      day of                      , and that the Registrar do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the                      day of                      .

And, lastly, it is ordered that this suit stand adjourned for making a final decree                      the                      day of                      .

THE FOURTH SCHEDULE—continued.

No. 133.

## PARTNERSHIP—FINAL DECREE

Section 215 of the Code of Civil Procedure.

IN THE COURT OF                      AT

Civil Suit, No. \_\_\_\_\_.

*A. B. of  
against  
C. D. of*

It is ordered that the fund now in Court, amounting to the sum of Rs. \_\_\_\_\_, be applied as follows:—

1. In payment of the debts due by the partnership set forth in the Registrar's certificate, amounting in the whole to Rs. \_\_\_\_\_.
2. In payment of the costs of all parties in this suit, amounting to Rs. \_\_\_\_\_.

[These costs must be ascertained before the decree is drawn up]

In payment of the sum of Rs \_\_\_\_\_ to the plaintiff as his share of the partnership-assets, of the sum of Rs \_\_\_\_\_, being the residue of the said sum of Rs. \_\_\_\_\_ now in Court, to the defendant as his share of the partnership-assets.

[Or, And that the remainder of the said sum of Rs.                      be paid to  
the said plaintiff [or defendant] in part payment of the sum of Rs.  
certified to be due to him in respect of the partnership-accounts.]

And that the defendant [*or* plaintiff] do on or before the day of \_\_\_\_\_ pay to the plaintiff [*or* defendant] the sum of Rs. \_\_\_\_\_ being the balance of the said sum of Rs \_\_\_\_\_ due to him, which will then remain due.

No. 134.

CERTIFICATE OF NON-SATISFACTION OF DECREE.

Section 224 of the Code of Civil Procedure.

IN THE COURT OF   AT

Civil Suit, No                      of 18     .

A. B. of  
against  
C. D. of

THE FOURTH SCHEDULE—*continued.*

CERTIFIED that no [or partial, as the case may be, and if partial, state to what extent] satisfaction of the decree of this Court, in Civil Suit No.            of 18    , a copy of which is hereunto attached, has been obtained by execution within the jurisdiction of this Court.

GIVEN under my hand and the seal of the Court, this            day,  
of            18    .



L. S.

*Judge.*

---

No 135.

NOTICE TO SHOW CAUSE WHY EXECUTION SHOULD NOT ISSUE.

Section 248 of the Code of Civil Procedure.

IN THE COURT OF            AT            .  
Civil Suit, No            of 18  
Miscellaneous, No.            of 18    .

A. B. of  
against  
C. D. of

To

WHEREAS

has made application to this Court for            execution of  
decree in Civil Suit No.            18    , this is to give you notice that you  
are to appear before this Court            on the            day of  
18    , either in person, or by a pleader of this Court, or agent  
duly authorized and instructed, to show cause, if any, why execution should  
not be granted.

GIVEN under my hand and the seal of the Court, this            day  
of            18    .



L. S.

*Judge.*  
2 N

(The Fourth Schedule.)

## THE FOURTH SCHEDULE—continued.

No. 136.

WARRANT OF ATTACHMENT OF MOVEABLE PROPERTY IN DEFENDANT'S  
POSSESSION IN EXECUTION OF A DECREE FOR MONEY.

Section 254 of the Code of Civil Procedure.

(Title)

To THE BAILIFF OF THE COURT

WHEREAS \_\_\_\_\_ was ordered, by decree of this Court  
passed on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, in Suit No. \_\_\_\_\_ of  
18\_\_\_\_, to pay to the plaintiff the sum of Rs. \_\_\_\_\_ as noted

in the margin; and whereas the said  
sum of Rs. \_\_\_\_\_ has not been paid.

DECREE.				
Principal	.	.	.	.
Interest	.	.	.	.
Costs	.	.	.	.
Costs of decree	.	.		
Interest thereon	.	.		
Total of attachment				
TOTAL				

THESE ARE TO COMMAND YOU to  
attach the moveable property of the  
said

as set forth in the list hereunto an-  
nexed, or which shall be pointed out  
to you by the said

\_\_\_\_\_, and unless the  
said

shall pay to you the said sum of  
Rs. \_\_\_\_\_, together with  
Rs. \_\_\_\_\_, the costs  
of this attachment, to hold the same  
until further orders from this Court

YOU ARE FURTHER COMMANDED to return this Warrant on or before the  
\_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, with an endorsement certifying  
the date and manner in which it has been executed, or why it has not been  
executed

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day  
of \_\_\_\_\_ 18\_\_\_\_.

Schedule.

L. S.

Judge.

## No. 137.

Section 263 of the Code of Civil Procedure.

(Title)

TO THE BAILIFF OF THE COURT.

GIVEN under my hand and the seal of the Court, this                      day,  
of                      18                      .

L S

*Judge.*

No 138.

## ATTACHMENT IN EXECUTION

PROHIBITORY ORDER, WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF  
MOVEABLE PROPERTY TO WHICH THE DEFENDANT IS ENTITLED SUBJECT  
TO A LIEN OR RIGHT OF SOME OTHER PERSON TO THE IMMEDIATE POS-  
SESSION THEREOF.

Section 268 of the Code of Civil Procedure.

(Title)

To

WHEREAS

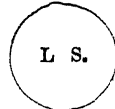
has failed to satisfy a decree passed against \_\_\_\_\_ on the  
day of \_\_\_\_\_ 18\_\_\_\_, in favour of \_\_\_\_\_ for Rs. \_\_\_\_\_ :  
it is ordered that the defendant be, and is hereby, prohibited and restrained,  
until the further order of this Court, from receiving from \_\_\_\_\_ the  
following property, in the possession of the said \_\_\_\_\_ that is  
to say, \_\_\_\_\_ to which the defendant is entitled,

<sup>1</sup> These words in form No. 137 were added by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s. 64, printed, General Acts, Vol. V, Ed. 1898, p. 232.

THE FOURTH SCHEDULE—*continued.*

subject to any claim of the said \_\_\_\_\_, and the said  
\_\_\_\_\_ is hereby prohibited and restrained, until the further order of  
this Court, from delivering the said property to any person or persons  
whomsoever.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day  
of \_\_\_\_\_ 18 \_\_\_\_ .



*Judge.*

\_\_\_\_\_  
No. 139.

## ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF DEBTS NOT  
SECURED BY NEGOTIABLE INSTRUMENTS.

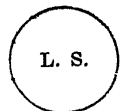
Section 268 of the Code of Civil Procedure.

(*Title.*)

To

WHEREAS  
has failed to satisfy a decree passed against \_\_\_\_\_ on the  
day of \_\_\_\_\_ 18 \_\_\_\_ , in Civil Suit, No. \_\_\_\_\_ of 18 \_\_\_\_ ,  
in favour of \_\_\_\_\_ for Rs. \_\_\_\_\_ : it is  
ordered that the defendant be, and is hereby, prohibited and restrained,  
until the further order of this Court, from receiving from you a certain  
debt alleged now to be due from you to the said defendant,  
namely, \_\_\_\_\_ and  
that you, the said \_\_\_\_\_, be, and you are hereby,  
prohibited and restrained, until the further order of this Court, from making  
payment of the said debt, or any part thereof, to any person whomsoever.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day  
of \_\_\_\_\_ 18 \_\_\_\_ .



*Judge.*

THE FOURTH SCHEDULE—continued.

No. 140.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES IN A  
PUBLIC COMPANY, ETC.

Section 268 of the Code of Civil Procedure.

(Title)

To \_\_\_\_\_ Defendant, and to \_\_\_\_\_  
 \_\_\_\_\_, Manager of \_\_\_\_\_ Company.  
 WHEREAS \_\_\_\_\_ has failed

to satisfy a decree passed against  
on the                      day of                      18                      , in Civil Suit, No                      of  
18                      , in favour of                      , for Rs.                      : it is  
ordered that you, the defendant, be, and you are hereby, prohibited and  
restrained, until the further order of this Court, from making any transfer  
of                      shares in  
the aforesaid Company, namely,  
or from receiving payment of any dividends thereof; and you  
                    the Manager of the said Company, are hereby prohi-  
bited and restrained from permitting any such transfer or making any such  
payment.

GIVEN under my hand and the seal of the Court, this                      day  
of                      18 .

L S

*Judge.*

No. 141.

### ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF IMMOVEABLE  
PROPERTY.

Section 274 of the Code of Civil Procedure.

(Title.)

To \_\_\_\_\_ Defendant.

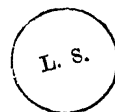
WHEREAS you have failed to satisfy a decree passed against you on the  
day of                      18                      , in Civil Suit, No.                      of 18                      ,

THE FOURTH SCHEDULE—*continued.*

in favour of \_\_\_\_\_, for Rs. \_\_\_\_\_ : it is  
ordered that you, the said \_\_\_\_\_, be, and you are  
hereby, prohibited and restrained, until the further order of this Court,  
from alienating the property specified in the schedule hereunto annexed,  
by sale, gift or otherwise, and that all persons be, and that they are hereby,  
prohibited from receiving the same by purchase, gift or otherwise.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day  
of \_\_\_\_\_ 18 \_\_\_\_.

*Schedule.*



*Judge.*

No 142.

ATTACHMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY OR OF  
ANY SECURITY IN THE HANDS OF A COURT OF JUSTICE OR OFFICER OF  
GOVERNMENT.

Sections 272 and 486 of the Code of Civil Procedure.

IN THE COURT OF \_\_\_\_\_ AT \_\_\_\_\_ .

Civil Suit, No \_\_\_\_\_ of 18 \_\_\_\_ .

A. B. of

*against*

C. D. of

To

SIR,

The plaintiff having applied, under section \_\_\_\_\_ of the Code  
of Civil Procedure, for an attachment of certain money now in your hands  
(*here state how the money is supposed to be in the hands of the person*

THE FOURTH SCHEDULE—*continued*

*addressed, on what account, etc.*), I request that you will hold the said money, subject to the further order of this Court.

I have the honour to be,

SIR,

Your most obedient Servant,

L. S.

*Judge.*

Dated the                      day of                      18   .

No. 143

ORDER FOR PAYMENT TO THE PLAINTIFF, ETC, OF MONEY, ETC, IN THE  
HANDS OF A THIRD PARTY.

Section 277 of the Code of Civil Procedure.

IN THE COURT OF                      AT                      .

Civil Suit, No.                      of 18   .

Miscellaneous, No.                      of 18   .

A B. of

*against*

C. D. of

TO THE BAILIFF OF THE COURT AND TO

WHEREAS the following property                      has been attached  
in execution of a decree in Civil Suit, No.                      of                      18   , passed on  
the                      day of                      18   , in favour of                      , for  
Rs                      : it is ordered that the property, so attached, consisting of  
Rs                      in money, and Rs                      in currency-notes, or a sufficient  
part thereof to satisfy the said decree, shall be paid over by you, the said  
                    , to                      , and that the said property, so far  
as may be necessary for the satisfaction of the said decree, shall be sold by  
you, the Bailiff of the Court, by public auction in the manner prescribed

THE FOURTH SCHEDULE—*continued.*

by such sale, or a sufficient part thereof to satisfy the said decree, shall be  
paid over to the said and  
the remainder, if any, shall be paid to you, the said  
GIVEN under my hand and the seal of the Court, this day  
of 18 .

L S

*Judge.*

No. 144.

## NOTICE TO ATTACHING CREDITOR

Section 278 of the Code of Civil Procedure.

IN THE COURT OF AT .  
Civil Suit, No of 18 .  
Miscellaneous, No. of 18 .  
A. B. of  
against  
C. D. of

To

WHEREAS has made application  
to this Court for the removal of attachment on placed  
at your instance in execution of the decree in Civil Suit, No. of 18 ,  
this is to give you notice to appear before this Court on , the  
day of 18 , either in person or by a pleader of  
the Court duly instructed, to support your claim, as attaching creditor.  
GIVEN under my hand and the seal of the Court, this day  
of 18 .

L. S

*Judge.*

THE FOURTH SCHEDULE—*continued.*

No. 145.

WARRANT OF SALE OF PROPERTY IN EXECUTION OF A DECREE FOR MONEY.

Section 287 of the Code of Civil Procedure

IN THE COURT OF

AT

Civil Suit, No.        of 18 .

Miscellaneous, No.        of 18 .

*A. B* of*against**C. D* of

TO THE BAILIFF OF THE COURT

THESE ARE TO COMMAND YOU to sell by auction after giving  
 days previous notice, by affixing the same in this Court-house, and after  
 making due proclamation,\* the

property attached under a  
 warrant from this Court dated the        day of        18 ,  
 in execution of a decree in favour of        in        suit No.        of  
 18 , or so much of the said property as shall realize the sum of Rs.        ,  
 being the        of the said decree and costs still remaining unsatis-  
 fied.

YOU ARE FURTHER COMMANDED to return this warrant on or before  
 the        day of        18 , with an endorsement certifying  
 the manner in which it has been executed, or the reason why it has not been  
 executed.

GIVEN under my hand and the seal of the Court, this        day  
 of        18 .


 L. S.
*Judge*


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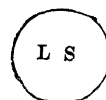
\* This proclamation shall specify the time, the place of sale, the property to be sold, the revenue assessed should the property consist of land paying revenue to Government, and the amount for the recovery of which the sale is ordered, and as fairly and accurately as possible the other particulars required by section 287 to be specified



THE FOURTH SCHEDULE—*continued.*

debt due from you to  
 you , that is to say ,  
 it is ordered that you be, and you  
 are hereby, prohibited from receiving, and you from  
 making payment of, the said debt to any person or persons except the  
 said .

GIVEN under my hand and the seal of the Court, this day  
 of 18 .



*Judge*

---

No. 148

## PROHIBITORY ORDER AGAINST THE TRANSFER OF SHARES SOLD IN EXECUTION.

Section 301 of the Code of Civil Procedure.

IN THE COURT OF AT .

Civil Suit, No of 18 .

A. B. of

against

C D of

To

and , Manager of Company.

WHEREAS has become the purchaser at a public  
 sale in execution of the decree, in the above suit, of certain shares in the  
 above Company, that is to say, of  
 standing in the name of you , it is ordered

that you be, and you are hereby, prohibited  
 from making any transfer of the said shares to any person except the  
 said , the purchaser aforesaid, or from receiving any  
 dividends thereon; and you

Manager of the said Company, from permitting any such transfer or making

THE FOURTH SCHEDULE—*continued.*

any such payment to any person except the said  
the purchaser aforesaid.

GIVEN under my hand and the seal of the Court, this                      day  
of                      18                      .



*Judge.*

No. 149.

ORDER CONFIRMING SALE OF LAND, ETC.

Section 312 of the Code of Civil Procedure.

IN THE COURT OF                      AT                      .

Civil Suit, No                      of 18                      .

A. B. of

*against*

C. D. of

WHEREAS the  
following land [*or* immoveable property] was on the  
day of                      18                      , sold by the Bailiff of this Court in execution of  
the decree in this suit; and whereas                      days have elapsed and no appli-  
cation has been made [*or* objection allowed] to the said sale, it is ordered  
that the said sale be, and the said sale is hereby, confirmed.

GIVEN under my hand and the seal of the Court, this                      day  
of                      18                      .

*Schedule.*



*Judge.*

THE FOURTH SCHEDULE—continued.

No. 150.

## CERTIFICATE OF SALE OF LAND.

Section 316 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No.                      of 18     .

A. B. of

*against*

*C. D.* of

THIS is to certify that \_\_\_\_\_ has been declared the purchaser at sale by public auction on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, of \_\_\_\_\_ in execution of decree in this suit, and that the said sale has been duly confirmed by the Court.

GIVEN under my hand and the seal of the Court, this                      day,  
of                      18 .

L S.

*Judge.*

No. 151.

ORDER FOR DELIVERY TO CERTIFIED PURCHASER OF LAND AT A SALE IN  
EXECUTION.

Section 318 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No.                      of 18     .

A. B. of

*against*

*C. D.* of

TO THE BAILIFF OF THE COURT.

WHEREAS \_\_\_\_\_ has become the  
certified purchaser of \_\_\_\_\_ at a sale in

THE FOURTH SCHEDULE—*continued*.

execution of the decree in Civil Suit, No. \_\_\_\_\_ of 18 \_\_, and  
 whereas such land is in the possession of \_\_\_\_\_, you  
 are hereby ordered to put the said \_\_\_\_\_,  
 the certified purchaser, as aforesaid, into possession of the  
 and if need be, to remove any person who may refuse to vacate the same.  
 GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day  
 of \_\_\_\_\_ 18 \_\_.


 L. S.
*Judge.*

No 152.

AUTHORITY TO THE COLLECTOR TO STAY PUBLIC SALE OF LAND.

Section 326 of the Code of Civil Procedure.

IN THE COURT OF \_\_\_\_\_ AT \_\_\_\_\_  
 Civil Suit, No. \_\_\_\_\_ of 18 \_\_\_\_  
 A. B. of \_\_\_\_\_  
*against*  
 C. D. of \_\_\_\_\_

To

*Collector of*

SIR,

In answer to your communication No \_\_\_\_\_, dated \_\_\_\_\_,  
 representing that the sale in execution of the decree in this suit of \_\_\_\_\_  
 and, lying within your district, paying revenue to Govern-  
 ment, is objectionable, I have the honour to inform you that you are author-

## (The Fourth Schedule)

THE FOURTH SCHEDULE—*continued.*

ized to make provision for the satisfaction of the said decree in the manner recommended by you instead of proceeding to a public sale of .

I have the honour to be,

SIR,

Your obedient Servant,

L S

*Judge.*

## No. 153.

ORDER FOR COMMITTAL FOR RESISTING, ETC , EXECUTION OF DECREE  
FOR LAND

Section 329 of the Code of Civil Procedure.

(Title)

To

WHEREAS it appears to the Court that  
has without just cause resisted [*or obstructed*] the execution of the decree  
of the Court passed against on the  
day of 18 , in Civil Suit, No. of 18 ,  
whereby certain land or immoveable property was adjudged to ,  
it is ordered that the said be committed to custody for  
a period of days.

GIVEN under my hand and the seal of the Court, this day  
of 18 .

L. S.

*Judge.*

THE FOURTH SCHEDULE—continued.

No. 154.

WARRANT OF ARREST IN EXECUTION  
Section 337 of the Code of Civil Procedure  
IN THE COURT OF AT .

Civil Suit, No. of 18 .  
Miscellaneous, No. of 18 .

A. B of  
against  
C. D. of

TO THE BAILIFF OF THE COURT.

WHEREAS was adjudged by a decree of  
the Court, in No. of 18 , dated 18 ,

Principal	.	.	.			
Interest	.	.	.			
Costs	.	.	.			
Execution	.	.	.			
TOTAL	.	.	.			

to pay, to the plaintiff the sum of  
Rs. as noted in the margin,  
and whereas the said sum of Rs.  
has not been paid to the said plaintiff  
in satisfaction of the said decree, these  
are to command you to arrest the said  
defendant, and unless the said defend-  
ant shall pay, to you the said sum of  
Rs. together with Rs.

for the costs of executing this process,  
to bring the said defendant before the Court with all convenient speed.  
You are further commanded to return this warrant on or before the  
day of 18 , with an endorsement certifying  
the day, and manner in which it has been executed, or the reason why it  
has not been executed.

GIVEN under my hand and the seal of the Court, this day  
of 18 .

L. S.

Judge.

THE FOURTH SCHEDULE—continued.

No. 155.

### NOTICE OF PAYMENT INTO COURT.

Section 377 of the Code of Civil Procedure.

[illegible]

TAKE notice that the defendant has paid into Court Rs. \_\_\_\_\_, and says that that sum is enough to satisfy the plaintiff's claim [*or the plaintiff's claim for, etc.*].

To Mr. X. Z.,  
the Plaintiff's Pleader.  
Z.,  
Defendant's Pleader.

No. 156.

COMMISSION TO EXAMINE ABSENT WITNESSES.

**Section 386 of the Code of Civil Procedure.**

IN THE COURT OF AT  
Civil Suit, No. of 18 .  
*A. B. of*  
*against*  
*C. D. of*

To

WHEREAS the evidence of \_\_\_\_\_ is required by the \_\_\_\_\_  
in the above suit; and whereas \_\_\_\_\_ you are requested to  
take the examination on interrogatories [*or vivâ voce*] of such witnesses

and you are hereby appointed a Commissioner for that purpose, and you are further requested to make return of such examination so soon as it may be taken [process to require the attendance of the witness will be issued by this Court on your application] \*

GIVEN under my hand and the seal of the Court, this                      day  
of                      18 .

L. S.

*Judge.*

\* Not necessary where the commission goes to another Court.



(The Fourth Schedule.)

## THE FOURTH SCHEDULE—continued.

for believing that the defendant is about to  
 these are to command you to take the  
 said into custody, and to bring before  
 the Court, in order that he may show cause why he should not furnish  
 security to the amount of rupees for personal  
 appearance before the Court, until such time as the said suit shall be fully  
 and finally disposed of, and until execution or satisfaction of any decree  
 that may be passed against in the suit.

GIVEN under my hand and the seal of the Court, this day  
 of 18 .


 L. S.

Judge.

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 No. 159.

## ORDER FOR COMMITTAL.

Section 481 of the Code of Civil Procedure.

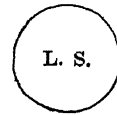
IN THE COURT OF AT  
 Civil Suit, No of 18  
*A B* of  
*against*  
*C. D* of

To

WHEREAS , plaintiff in this suit, has made  
 application to the Court that security be taken for the appearance of the  
 defendant to answer  
 any judgment that may be passed against  
 in the suit; and whereas the Court has called upon the defendant  
 to furnish such security, or to offer a sufficient  
 deposit in lieu of security, which has failed to do; it is  
 ordered that the said defendant be committed to cus-  
 tody until the decision of the suit; or, if judgment be given against  
 until the execution of the decree

THE FOURTH SCHEDULE—*continued.*

GIVEN under my hand and the seal of the Court, this                      day  
of                      18                      .



*Judge.*

—  
No. 160.

ATTACHMENT BEFORE JUDGMENT, WITH ORDER TO CALL FOR SECURITY FOR  
FULFILMENT OF DECREE.

Section 484 of the Code of Civil Procedure.

IN THE COURT OF                      AT  
Civil Suit, No.                      of 18  
A. B. of  
against  
C. D. of

TO THE BAILIFF OF THE COURT.

WHEREAS                      has proved to the satisfaction of the  
Court that the defendant in the above suit                      , these are to com-  
mand you to call upon the said defendant                      on or before  
the                      day of                      either to furnish security  
for the sum of rupees                      to produce and place at the disposal  
of this Court when required                      or the  
value thereof, or such portion of the value as may be sufficient to fulfil  
any decree that may be passed against                      , or to  
appear and show cause why                      should not furnish security;  
and you are further ordered to attach the said                      and keep the  
same under safe and secure custody until the further order of the Court,  
and in what manner you shall have executed this warrant make appear  
to the Court immediately after the execution hereof, and have you here  
then this warrant.

THE FOURTH SCHEDULE—*continued.*

GIVEN under my hand and the seal of the Court, this  
day of                      18      .

L. S.

*Judge.*

—  
No. 161.

ATTACHMENT BEFORE JUDGMENT, ON PROOF OF FAILURE TO FURNISH  
SECURITY.

Section 485 of the Code of Civil Procedure.

IN THE COURT OF                      AT  
Civil Suit, No.                      of 18  
A. B. of  
against  
C. D. of

TO THE BAILIFF OF THE COURT.

WHEREAS                      , the plaintiff in this suit, has  
applied to the Court to call upon                      , the defendant, to  
furnish security to fulfil any decree that may be passed against  
in the suit, and whereas the Court has called upon the said  
to furnish such security, which  
has failed to do; these are to command you to attach  
the property of the said                      and  
keep the same under safe and secure custody until the further order of  
the Court, and in what manner you shall have executed this warrant make  
appear to this Court immediately after the execution hereof, and have you  
here then this warrant.

GIVEN under my hand and the seal of the Court, this  
day of                      18

L. S.

*Judge.*



THE FOURTH SCHEDULE—*continued.*

are hereby, prohibited and restrained, until the further order of this Court, from alienating the property specified in the schedule hereunto annexed, by sale, gift or otherwise, and that all persons be, and that they are hereby, prohibited from receiving the same by purchase, gift or otherwise.

GIVEN under my hand and the seal of the Court, this                      day,  
of                      18                      .

*Schedule*

L S

*Judge.*

No. 164.

## ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY IN THE HANDS OF OTHER PERSONS, OR OF DEBTS NOT BEING NEGOTIABLE INSTRUMENTS.

Section 486 of the Code of Civil Procedure.

IN THE COURT OF                      AT  
Civil Suit, No.                      of 18  
A B. of  
against  
C. D. of

To

It is ordered that the defendant                      be, and he is hereby, prohibited and restrained, until the further order of this Court, from receiving from                      the [money now in                      hands belonging to the said defendant or debts, as the case may be, describing them] and that the said                      be, and hereby, prohibited and restrained, until the further order of this Court, for making payment of the said [money, etc], or any part thereof, to any person whomsoever.

GIVEN under my hand and the seal of the Court, this                      day  
of                      18                      .

L S

*Judge.*



THE FOURTH SCHEDULE—*continued*.

plaintiff in this matter filed [this day] [or the plaint filed in this cause on the                      day of                      , or the written statement of the said plaintiff filed on the                      day of                      ] and upon hearing the evidence of                      and                      in support thereof, [*if after notice and defendant not appearing: add,* and also the evidence of                      as to service of notice of this motion upon the defendant, *C.D.*]. This Court doth order that an injunction be awarded to restrain the defendant, *C.D.*, his servants, workmen and agents, from pulling down, or suffering to be pulled down, the house in the plaint in the said suit of the plaintiff mentioned [or in the written statement, or petition, of the plaintiff and evidence at the hearing of this motion mentioned] being No. 9, Oilmongers Street, Hindupur, in the Taluk of                      , and from selling the materials whereof the said house is composed, until the hearing of this cause or until the further order of this Court.

Dated this                      day of                      18                      .

*Civil Judge.*

[*Where the injunction is sought to restrain the negotiation of a note or bill, the ordering part of the order may run thus:—*]                      to restrain the defendants                      and                      from parting with out of the custody of them or any of them or endorsing, assigning or negotiating the promissory note [or bill of exchange] in question, dated on or about the                      , etc, mentioned in the plaintiff's plaint [or petition] and the evidence heard at this motion until the hearing of this cause, or until the further order of this Court.

[*In Copyright cases*]                      to restrain the defendant, *C. D.*, his servants, agents or workmen, from printing, publishing or vending a book, called                      , or any part thereof, until the, etc.

[*Where part only of a book is to be restrained*]                      to restrain the defendant, *C. D.*, his servants, agents or workmen, from printing, publishing, selling or otherwise disposing of such parts of the book in the plaint [or petition and evidence, etc.] mentioned to have been published by the defendant as hereinafter specified, namely, that part of the said book which is entitled                      and                      also that part

THE FOURTH SCHEDULE—*continued*.

which is entitled [or which is contained in page  
to page both inclusive] until the , etc.

[*In Patent cases*] to restrain  
the defendant, *C. D.*, his agents, servants and workmen, from making or  
vending any perforated bricks [*or as the case may be*] upon the principle  
of the inventions in the plaintiff's plaint [*or petition, etc., or written state-*  
ment, etc.] mentioned, belonging to the plaintiffs, or either of them, dur-  
ing the remainder of the respective terms of the patents in the plaintiff's  
plaint [*or as the case may be*] mentioned, and from counterfeiting, imitat-  
ing or resembling the same inventions, or either of them, or making any  
addition thereto, or subtraction therefrom, until the hearing, etc.

[*In cases of Trademarks*] to restrain  
the defendant, *C. D.*, his servants, agents or workmen, from selling, or  
exposing for sale, or procuring to be sold, any composition or blacking  
[*or as the case may be*] described as or purporting to be blacking manufac-  
tured by the plaintiff, *A. B.*, in bottles having affixed thereto such labels  
as in the plaintiff's plaint [*or petition, etc.*] mentioned, or any other labels  
so contrived or expressed as by colourable imitation or otherwise, to repre-  
sent the composition or blacking sold by the defendant to be the same as  
the composition or blacking manufactured and sold by the plaintiff, *A. B.*,  
and from using trade-cards so contrived or expressed as to represent that  
any composition or blacking sold or proposed to be sold by the defendant is  
the same as the composition or blacking manufactured or sold by the plain-  
tiff, *A. B.*, until the, etc.

[*To restrain a partner from in any way interfering in the business*]  
to restrain the  
defendant, *C. D.*, his agents and servants, from entering into any contract,  
and from accepting, drawing, endorsing or negotiating any bill of exchange,  
note or written security in the name of the partnership-firm of *B. and D.*,  
and from contracting any debt, buying and selling any goods, and from  
making or entering into any verbal or written promise, agreement or  
undertaking, and from doing or causing to be done, any act, in the name  
or on the credit of the said partnership-firm of *B. and D.*, or whereby the  
said partnership-firm can or may in any manner become or be made liable  
to or for the payment of any sum of money, or for the performance of any  
contract, promise or undertaking until the, etc.

THE FOURTH SCHEDULE—*continued.*

No. 167.

NOTICE OF APPLICATION FOR INJUNCTION.

Section 494 of the Code of Civil Procedure.

IN THE COURT OF AT

*A. B.* of

*against*

$C, D$  of

TAKE notice that I, *A. B.*, intend to apply at the sitting of the Court at \_\_\_\_\_ aforesaid, on the \_\_\_\_\_ day of \_\_\_\_\_ for an injunction to restrain *C. D.* from further prosecuting a suit which he has commenced against me in \_\_\_\_\_, to recover damages for the breach of the contract for the specific performance of which this suit was commenced [*or to restrain him from receiving and giving discharges for any of the debts due to the partnership in the matter of the partnership between us for the winding-up of which the suit was commenced, or from digging the turf from the land which was agreed to be sold by him to me by the agreement, the specific performance of which this suit is commenced to enforce, or as the case may be*].

Dated this                      day of                      18   .  
To *C. D.*

*A. B.*

[N B—Where the injunction is to be applied for against a party whose name and address do not appear upon any proceedings already filed in the suit, such name and address must be stated in full to enable the proper officer to serve the notice.]

No 168.

### APPOINTMENT OF A RECEIVER.

Section 503 of the Code of Civil Procedure.

IN THE COURT OF    AT

Civil Suit, No.                      of 18     .

'A. B. of

*against*

C. D. of

To

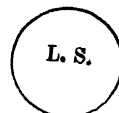
WHEREAS \_\_\_\_\_ has been attached in execution  
of a decree passed in the above suit on the \_\_\_\_\_ day of \_\_\_\_\_

THE FOURTH SCHEDULE—*continued.*

18 , in favour of : you are hereby (subject to your giving security to the satisfaction of the *Registrar*) appointed Receiver of the said property, under section 503 of the Code of Civil Procedure, with full powers under the provisions of that section.

YOU are required to render a due and proper account of your receipts and disbursements in respect of the said property on .  
You will be entitled to remuneration at the rate of per cent.  
upon your receipts under the authority of this appointment.

GIVEN under my hand and the seal of the Court, this day  
of 18 .



*Judge.*

---

No. 169.

## BOND TO BE GIVEN BY RECEIVER.

Section 503 of the Code of Civil Procedure.

IN THE COURT OF AT  
Civil Suit, No. of 18 .  
A B. of  
against  
C. D. of

KNOW all men by these presents, that we, *I. J.* of, etc, and *K L.* of, etc, and *M. N.* of, etc, are jointly and severally bound to *G. H.*, *Registrar* of the Court of , in Rs. , to be paid to the said *G. H.* or his attorney, executors, administrators or assigns. For which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors and administrators, jointly and severally, by these presents.

Dated this day of 18 .

And whereas a plant has been filed in this Court by *A. B.* against *C. D.* for the purpose of [*here insert the object of suit*]

And whereas the said *I. J.* has been appointed, by order of the above-mentioned Court, to receive the rents and profits of the immoveable pro-

THE FOURTH SCHEDULE—*continued.*

perty and to get in the outstanding moveable property of *O. P.*, the testator in the said plaint named.

Now the condition of this obligation is such, that if the above-bounden *I. J.* shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the immoveable property, and in respect of the immoveable property of the said *O. P.* [*or, as may be*] at such periods as the said Court shall appoint, and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court hath directed or shall hereafter direct, then this obligation shall be void, otherwise it shall remain in full force.

*I. J.*

*K. L.*

*M. N.*

Signed and delivered by the above-bounden in the presence of

NOTE—*If deposit of money be made, the memorandum thereof should follow the terms of the condition of the bond*

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No. 170.

## ORDER OF REFERENCE TO ARBITRATION UNDER AGREEMENT OF PARTIES.

## Section 508 of the Code of Civil Procedure.

(Title.)

To

WHEREAS the above-mentioned plaintiff and defendant have agreed to refer the matter in difference between them in the above suit to your arbitration and award, you are hereby appointed accordingly to determine all the said matters in difference between the parties, and with power, by consent of the parties, to determine which party shall pay the costs of this reference.

You are required to deliver your award in writing to this Court on or before the                      day of                      18    , or such other day as this Court may further fix.

Process to compel the attendance before you of any witnesses, or for the production of any documents which you may desire to examine or inspect, will be issued by this Court on your application, and you are empowered to administer to such witnesses oath or affirmation.

A sum of Rs.                      , being your fee in the above suit, is herewith forwarded.

THE FOURTH SCHEDULE—*continued*.

GIVEN under my hand and the seal of the Court, this                      day  
of                      18                      .



L. S.

*Judge.*

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No. 171.

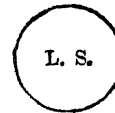
ORDER OF REFERENCE TO ARBITRATION BY COURT, WITH CONSENT  
Section 508 of the Code of Civil Procedure.

(Title)

UPON reading a petition of the plaintiff, filed this day, and on the consent of                      for the defendant, and upon hearing                      for the plaintiff and                      for the defendant, it is ordered, by and with the consent of all the parties, that all matters in difference in this suit, including all dealings and transactions between all parties, be referred to the final determination of                      who is to make his award in writing and submit the same to this Court, together with all proceedings, depositions and exhibits in this suit, within one month from the date hereof. And it is ordered further, by and with the like consent, that the said arbitrator is to be at liberty to examine the parties and their witnesses upon oath or affirmation, which he is empowered to administer, and that the said arbitrator shall have all such powers or authorities as are vested in arbitrators under the Code of Civil Procedure, including therein power to call for all books of account that he may consider necessary. And it is further ordered, by and with the like consent, that the costs of this suit, together with the costs of reference to arbitration, up to and including the award of the said arbitrator, and the enforcement thereof, do abide the result of the finding of the said arbitrator. And it is further ordered, by and with the like consent, that the said arbitrator be at liberty to appoint a competent accountant to assist him in the investigation of the several matters referred to him as aforesaid, and that the remuneration of such accountant and other charges attending thereto be in the discretion of the said arbitrator.

THE FOURTH SCHEDULE—*continued.*

GIVEN under my hand and the seal of the Court, this      day  
of      18      .



*Judge.*

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No. 172.

SUMMONS IN SUMMARY SUIT ON NEGOTIABLE INSTRUMENT.

Section 532 of the Code of Civil Procedure.

*No. of Suit.*

IN THE COURT OF      AT      .

Plaintiff.

To      Defendant.

[*Here enter the defendant's name, description and address.*]

WHEREAS [*here enter the plaintiff's name, description and address*] has instituted a suit in this Court against you under Chapter XXXIX of the Code of Civil Procedure for Rs.      principal and interest [*or* Rs.

balance of principal and interest] due to him as the payee [*or* endorsee] of a bill of exchange [*or* hundi *or* promissory note], of which a copy is hereto annexed, you are hereby summoned to obtain leave from the Court within ten days from the service hereof, inclusive of the day of such service, to appear and defend the suit, and within such time to cause an appearance to be entered for you. In default whereof the plaintiff will be entitled at any time after the expiration of such ten days to obtain a decree for any sum not exceeding the sum of Rs [*here state the sum claimed*] and the sum of Rs.      for costs.

Leave to appear may be obtained on an application to the Court supported by affidavit or declaration showing that there is a defence to the suit on the merits, or that it is reasonable that you should be allowed to appear in the suit.

[*Here copy the bill of exchange, hundi or promissory note, and all endorsements upon it.*]

THE FOURTH SCHEDULE—*continued.*

No. 173.

## MEMORANDUM OF APPEAL.

Section 541 of the Code of Civil Procedure.

## MEMORANDUM OF APPEAL.

(Name, etc., as in Register.) Plaintiff—Appellant.

(Name, etc., as in Register.) Defendant—Respondent.

[Name of Appellant] [plaintiff or defendant] above-named appeals to the High Court at [or District Court at , as the case may be] against the decree of in the above suit dated the day of , for the following reasons, namely [here state the grounds of objection].

THE FOURTH SCHEDULE—continued.

No. 174.

REGISTER OF APPEALS.

Section 548 of the Code of Civil Procedure.

COURT (OR HIGH COURT) AT

REGISTER OF APPEALS FROM DECREES IN THE YEAR 18 .

Date of Memorandum		No of Appeal.		APPELLANT			RESPONDENT			DECREE APPEALED FROM				APPEARANCE			JUDGMENT		
				Name			Name			Of what Court.				Day for parties to appear.			Date		
		Description		Place of abode			Description			Particulars				Appellant			Confirmed, reversed or altered		
										Amount or Value.				Respondent			For what or Amount.		
										No of Original Suit									

THE FOURTH SCHEDULE—*continued*.

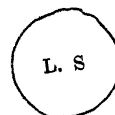
No. 175.

NOTICE TO RESPONDENT OF THE DAY FIXED FOR THE HEARING OF THE  
APPEAL.

Section 553 of the Code of Civil Procedure.

IN THE COURT OF AT .  
, *Appellant*, v. , *Respondent*.APPEAL from the of the Court of dated  
the day of 18 .  
*Respondent*.

To

TAKE notice that an appeal from the decree of in  
this case has been presented by and registered  
in this Court and that the day of  
18 has been fixed by this Court for the hearing of this appeal.If no appearance is made on your behalf by yourself, your pleader, or  
by some one by law authorized to act for you in this appeal, it will be heard  
and decided *ex parte* in your absence.GIVEN under my hand and the seal of the Court, this day  
of 18 ,*Judge.*[NOTE—If a stay of execution has been ordered, intimation should be given of the fact  
on this notice].

No. 176.

## DECREE ON APPEAL.

Section 579 of the Code of Civil Procedure.

IN THE COURT OF AT .  
, *Appellant*, v. , *Respondent*.APPEAL from the of the Court of dated  
the day of 18 .

(The Fourth Schedule    *Appendix.*)THE FOURTH SCHEDULE—*concluded.*

## MEMORANDUM OF APPEAL.

, *Plaintiff.*, *Defendant.*

Plaintiff [*or* defendant] above-named appeals to the      Court  
 at      against the decree of      in the above suit, dated  
 the      day of      18      , for the fol-  
 lowing reasons, namely:—

[*here state the reasons*]

This appeal coming on for hearing on the      day of  
 18      before      , in the presence of  
     for the Appellant, and of      for  
 the Respondent, it is ordered—

[*here state the relief granted*]

The costs of this appeal, amounting to      , are to be paid  
 by      . The costs of the original suit are to be paid by

GIVEN under my hand, this      day of      .

L S.

*Judge.*

## APPENDIX.

STATEMENT OF THE SCHEDULED DISTRICTS IN WHICH THE CODE IS IN  
FORCE.

1—The whole Code (except sections 1 and 3<sup>1</sup>) has been extended under  
 section 5 of the Scheduled Districts Act, 1874 (XIV of 1874), printed, Gen-  
 eral Acts, Vol. II, to the following Scheduled Districts:—

Sindh . . . . .	See Gazette of India, 1882, Part I, page 217.
The Districts of Dárjuling and Jal- páigori (called in Act XIV of 1874 the Dárjuling and Jalpáiguri Divisions) . . . . .	Ditto,      ditto,      page 218.

<sup>1</sup> Ss 1 and 3 extend to the whole of British India and consequently to all Scheduled  
 Districts which are not deregulationised

## APPENDIX—continued.

The Districts of Hazáubígh, Lohárdaga (including at this time the District of Palamau which was separated in 1894) and Mánbhum, the Pargana of Dhálbhum in the District of Singbhum, and the Mahál of Angul . . . .				See Gazette of India, 1882, Part I, page 218.	
The Pargana Jaunsár Báwar in the Dehrá Dún District and the scheduled portion of the Mirzápur District . . . .				Ditto,	ditto, page 217.
The Scheduled Districts of the Punjab . . . .				Ditto,	ditto, page 219.
Coorg . . . .				Ditto,	ditto, page 217.
The Districts of Kámrup, Nowgong, Darrang, Sibságar, Lakhmpur, Goálpára (excluding the Eastern Dvárs), Sylhet, Cachar (excluding the North Cachar Hills) . . .				Ditto,	ditto, page 218.
The territory transferred from Upper Burma to Lower Burma by Notification No. 110, dated 24th February, 1887, and No. 341, dated 13th August, 1887 . . . .				Ditto,	1887, Part I, pages 123 and 429, respectively.
Ajmere and Merwára . . . .				Ditto,	1882, Part I, page 289.
The Scheduled Districts of the Central Provinces (except ss 1 and 3 <sup>1</sup> and so much of the Code as authorizes the sale of immoveable property in execution of a decree, not being a decree directing the sale of such property) . . . .				Ditto,	ditto, page 217.
The whole Code has been extended to the Municipality of Chaibassa in the Singbhum District, <i>see</i> Gazette of India, 1896, Pt. I, p. 44.					
So much of the whole Code as has not been repealed has been declared in force under s. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874),					

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<sup>1</sup> Ss 1 and 3 extend to the whole of British India and consequently to all Scheduled Districts which are not deregulationised.

See Gazette of India, 1889, do, page 151.

APPENDIX—*continued.*

IV.—So much of the Civil Procedure Code Amendment Act, 1888 (VII of 1888), printed, General Acts, Ed. 1898, Vol V, p. 232, as amends the Code, has been extended, under the same section, to the following Scheduled Districts, namely:—

Sindh . . . . .	<i>See Gazette of India, 1888, Part I, page 478.</i>		
The Districts of Dárjiling and Jalpáiguri . . . . .	Ditto,	ditto,	page 5.
The Districts of Hazáribágh, Lohárdaga (including at this time the District of Palamau which was separated in 1894) and Mánbhum, the Pargana of Dhálbhum in the District of Singbhum and the Mahál of Angul . . . . .	Ditto,	ditto,	page 5.
Coorg . . . . .	Ditto,	ditto,	page 409.
The Scheduled Districts of the Central Provinces . . . . .	Ditto,	ditto,	page 408.
The Andaman and Nicobar Islands	Ditto,	ditto,	page 5.
The Town of Mandalay . . . . .	Ditto,	ditto,	page 37.
The Pargana of Jaunsár Báwar in the Dehrá Dún District, and the scheduled portion of the Mirzápur District . . . . .	Ditto,	ditto,	page 4.
The Districts of Kámrup, Nowgong (excluding the Mikir Hill Tract), Darrang, Sibsagar, Lakhimpur (excluding the Dibrugarh Frontier Tract), Goálpára (excluding the Eastern Dvárs), Sylhet and Cachar (excluding the North Cachar Hills)	Ditto,	ditto,	page 478.
The Scheduled Districts of the Punjab . . . . .	Ditto, 1889,	ditto,	page 299.
Ajmere and Merwára . . . . .	Ditto,	ditto,	page 22.

As to the extension of part of Act VII of 1888, printed, General Acts, Ed. 1898, Vol. V, p. 232, to the Scheduled Districts of Madras, *see* note III, *supra*.

V.—Sections 1 and 3 of the Presidency Small Cause Courts Law Amendment Act, 1888 (X of 1888), printed, General Acts, Ed. 1898, Vol V, p. 251, have been extended under section 5 of the Scheduled Districts Act,

## APPENDIX—continued.

1874 (XIV of 1874), printed, General Acts, Vol. II, to the following Scheduled Districts, namely:—

The Districts of Dárling, Jalpáiguri, Hazáribágh, Lohárdaga (including at this time the District of Palamau which was separated in 1894) and Mánbhum, the Pargana of Dhálbhum in the District of Singbhum, and the Mahál of Angul ( <i>see also Note VI infra as to Angul</i> ) . . . . .				<i>See Gazette of India, 1888, Part, I, page 538.</i>			
The Scheduled Districts of the Punjab . . . . .				Ditto, 1889,	ditto,	page 299.	
Coorg . . . . .				Ditto,	ditto,	page 286.	
Ajmere and Merwára . . . . .				Ditto,	Part II,	page 220	
The Scheduled Districts of the Central Provinces . . . . .				Ditto,	Part I,	page 292.	
The Andaman and Nicobar Islands.				Ditto,	ditto,	page 40.	
The Town of Mandalay ( <i>see also note VI, infra</i> ) . . . . .				Ditto,	ditto,	page 28.	
The Pargana of Jaunsár Báwar in the Dehrá Dún District and the scheduled portion of the Mirzápur District . . . . .				Ditto,	ditto,	page 3.	
The Districts of Kámrup, Nowgong (excluding the Mikir Hill Tract), Darrang, Sibságar, Lakhimpur (excluding the Dibrugarh Frontier Tract), Goálpára (excluding the Eastern Dvárs), Sylhet and Cachar (excluding the North Cachar Hills) . . . . .				Ditto,	ditto,	page 292.	
Sindh . . . . .				Ditto,	ditto,	page 89.	

Section 5 of the Code, and sections 1 and 4 of Act X of 1888, printed, General Acts, Ed. 1898, Vol. V, p. 251, have been extended under section 5 of the Scheduled Districts Act, 1874 (XIV of 1874), to the Kolhán in the District of Singbhum, *see Gazette of India, 1889, Part I, page 538.*

Section 4 of the Act has been extended to (1) the Districts of Dárling, Jalpáiguri, Hazáribágh, Lohárdaga (including at this time the Palamau District which was separated in 1894), Mánbhum and Pargana Dhálbhum in the Singbhum District, *see Gazette of India, 1889, Pt. I, p 538*; (2)

(Appendix.)

## APPENDIX—concluded.

Upper Burma (except Mandalay), *see* Gazette of India, 1889, Pt. I, p. 292 (*see* also note VI, *infra*).

VI.—In addition to the above extensions under the Scheduled Districts Act, 1874 (XIV of 1874), the Code is by virtue of special enactments and s. 3 of the Code, in force in the following Scheduled Districts :—

Aden and Perim<sup>1</sup> (subject to modifications), by the Civil and Criminal Justice, Aden Act (II of 1864), s. 16, *see* Bombay Code, Vol. I, Ed. 1894;

the Andaman and Nicobar Islands (with certain modifications noted *supra*), by s. 14 of the Andaman and Nicobar Islands Regulation, 1876 (III of 1876), printed, Gazette of India, 1876, Pt. I, p. 360 (*as amended by Reg. I of 1884, s. 4*), *see* Gazette of India, 1884, Pt. I, p. 15.

The whole Code as amended by subsequent enactments, has, subject to the provisions of the Upper Burma Civil Courts Regulation, 1896 (I of 1896), been extended to Upper Burma (except the Shan States), *see* section 6 of the Regulation, and the First Schedule to the Burma Laws Act, 1898 (XIII of 1898).

It was previously in force in the Town of Mandalay only, *see* the Upper Burma Laws Act, 1886 (XX of 1886), s. 6, and Sch. II, Pt. II.

So much of the whole Code as was in force in British India generally on the 1st February, 1894, was declared in force in the Angul District, by the Angul District Regulation, 1894 (I of 1894).

VII.—Certain sections of the Code and such portions as are referred to in, and affected by, the Debtors Act, 1888 (VI of 1888), printed, General Acts, Ed. 1898, Vol. V, p. 229, and can be made applicable to proceedings under the British Baluchistan Civil Justice Regulation, have been applied to British Baluchistan, *see* the schedule attached to the British Baluchistan Laws Regulation, 1890 (I of 1890), printed, Baluchistan Code, Ed. 1890, p. 69.

VIII.—The Debtors Act, 1888 (VI of 1888), has been declared in force under s. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), in the Scheduled Districts in Ganjam and Vizagapatam, *see* Gazette of India, 1898, Pt. I, p. 869.

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<sup>1</sup> Act II of 1864 has been extended to Perim under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), by Notification No. 823, *see* Gazette of India, 1886, Pt. I, p. 86

## THE PRESIDENCY SMALL CAUSE COURTS ACT, 1882.

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CONTENTS.

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## CHAPTER I.

## PREAMBLE

## PRELIMINARY.

## SECTIONS

- 1 Short title.  
Commencement
  - 2 Repeal of enactments  
References in previous Acts
  - 3 Amendment of Acts
  4. "Small Cause Court" defined.
- 

## CHAPTER II.

## CONSTITUTION AND OFFICERS OF THE COURT.

5. Courts of Small Causes established
  6. Court to be deemed under superintendence, etc, of High Court
  7. Appointment, suspension and removal of Judges.
  8. Rank and precedence of Judges
  - 8A. Performance of duties of absent Judge.
  - 9 Procedure and practice of Small Cause Court
  10. Chief Judge to distribute business of Court
  11. Procedure in case of difference of opinion
  12. Seal to be used
  - 13 Appointment of Registrar and ministerial officers  
Powers and duties of such officers
  14. Registrar may be invested with powers of a Judge in suits not exceeding twenty rupees.
  15. Judge or other officer not to practice or trade.
- 

## CHAPTER III

## LAW ADMINISTERED BY THE COURT

16. Questions arising in suits, etc, under Act to be decided according to law administered by High Court.

## CHAPTER IV.

## JURISDICTION IN RESPECT OF SUITS.

## SECTIONS.

17. Local limits of jurisdiction of Court.
  18. Suits in which Court has jurisdiction.
  - 18A. Plaintiff may abandon suit against defendant resident out of jurisdiction.
  19. Suits in which Court has no jurisdiction.
  - 19A. Return of plaint.
  20. Court may by consent try suits beyond pecuniary limits of jurisdiction.
  21. Suits by and against officers of Court
  22. Costs when plaintiff sues in the High Court in other cases cognizable by Small Cause Court.
- 

## CHAPTER V.

## PROCEDURE IN SUITS.

23. [*Repealed.*]
  24. No written statement except in cases of set-off.
  25. Return of documents admitted in evidence
  26. Compensation payable by plaintiff to defendant in certain cases.
  27. Decree-holder to accompany officer executing warrant
  28. Things attached to immoveable property and removeable by tenant to be deemed moveable in execution
  29. Discharge of judgment-debtor on sufficient security
  30. Court may in certain cases suspend execution of decree
  31. Execution of decree of Small Cause Court by other Courts  
Procedure when decree transferred
  32. Minors may sue in certain cases as if of full age
  33. Power to delegate non-judicial duties
  34. Registrar to hear and determine suits like a Judge.  
Proviso.
  35. Registrar may execute all decrees with the same powers as a Judge
  36. Decrees and orders of Registrar to be subject to new trial as if made by a Judge.
- 

## CHAPTER VI

## NEW TRIALS AND APPEALS.

37. General finality of decrees and orders of Small Cause Court
38. New trial of contested cases.
39. Removal of certain causes into High Court
40. Rules with respect to suits removed under the last foregoing section.

## CHAPTER VII.

## RECOVERY OF POSSESSION OF IMMOVEABLE PROPERTY.

## SECTIONS.

41. Summons against person occupying property without leave.
  42. Service of summons.
  43. Order for possession.
  44. Such order to justify bailiff entering on property and giving possession  
Bar to proceedings against Judge or officer for issuing, etc., order or summons.
  45. Applicant, if entitled to possession, not to be deemed trespasser for any error in proceedings  
Occupant may sue for compensation.
  46. Liability of applicant obtaining order when not entitled  
Application for order in such case an act of trespass.
  47. Stay of proceedings on occupant giving security to bring suit against applicant.
  48. Proceedings to be regulated by Code of Civil Procedure
  49. Recovery of possession no bar to suit to try title.
- 

## CHAPTER VIII.

## DISTRESSES.

50. Local extent of chapter.  
Saving of certain rents.
51. Appointment of bailiffs and appraisers.
52. Security to be given by appointees
53. Application for distress-warrant.
54. Issue of distress-warrant.
55. Time for distress.
56. What places bailiff may force open.
57. Property which may be seized.
58. Impounding distress.
59. Inventory.  
Notice of intended appraisement and sale.  
Copies of inventory and notice to be filed
60. Application to discharge or suspend warrant
61. Claim to goods distrained made by a stranger
62. Power to award compensation to debtor or claimant
63. Power to transfer to High Court cases involving more than one thousand rupees.
64. Appraisement.  
Notice of sale.
65. Sale  
Application of proceeds.

## SECTIONS.

- 66 Costs of distresses.
  - 67 Account of costs and proceeds
  - 68. Bar of distresses except under this Chapter.  
Penalty for making illegal distresses.
- 

## CHAPTER IX.

## REFERENCES TO HIGH COURT.

- 69 Reference when compulsory.
  - 70 Security to be furnished on such reference by party against whom contingent judgment given  
If no such security given party to be deemed to have submitted to judgment.
- 

## CHAPTER X.

## FEES AND COSTS.

- 71 Institution-fee.
  - 72 Fees for processes.
  - 73 Repayment of half fees on settlement before hearing.
  - 74. Fees and costs of poor persons
  - 75 Power to vary fees.
  - 76 Expense of employing legal practitioners
  - 77. Sections 3, 5 and 25 of Court Fees Act, 1870, saved.
- 

## CHAPTER XI.

## MISCONDUCT OF INFERIOR MINISTERIAL OFFICERS.

- 78 Power to fine officers
  - 79. Default of bailiff or other officer in execution of order or warrant.
  - 80 Extortion or default of officers
  - 81. Court empowered to summon witnesses, etc
  - 82 Enforcement of order.
- 

## CHAPTER XII.

## CONTEMPT OF COURT

- 83 Procedure of Court in certain cases of contempt
- 84 Record in such cases
- 85. Procedure where Court considers that case should not be dealt with under section 83

SECTIONS.

- 86 Discharge of offender on submission or apology.
- 87. Imprisonment or committal of person refusing to answer or produce document
- 88 Appeal from orders under sections 83 and 87.

---

CHAPTER XIII.

MISCELLANEOUS.

- 89. Persons by whom process may be served.
- 90. Registers and returns.
- 91. Court to furnish records, etc, called for by Local Government or High Court.
- 92. Holidays and vacations.
- 93 Certain persons exempt from arrest by Court.
- 94 No suit to lie upon decree of Court.
- 95. Place of imprisonment.
- 96. Tender in suit for anything done under Act.
- 97. Limitation of prosecutions.

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THE FIRST SCHEDULE — ENACTMENTS REPEALED.

THE SECOND SCHEDULE.—[*Repealed.*]

THE THIRD SCHEDULE.—FORMS OF AFFIDAVIT, WARRANT, INVENTORY, ETC.

THE FOURTH SCHEDULE.—FEES FOR SUMMONSES AND OTHER PROCESSES.

ACT No. XV OF 1882<sup>1</sup>

[17th March, 1882.]

An Act to consolidate and amend the law relating to the Courts  
of Small Causes established in the Presidency-towns.

**Preamble.** WHEREAS it is expedient to consolidate and amend the law relating to the Courts of Small Causes established in the towns of Calcutta, Madras and Bombay; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

**Short title**           1. This Act may be called the Presidency Small Cause Courts Act,  
**Commence-**       1882, and it shall come into force on the first day of July, 1882.  
**ment**

But nothing herein contained shall affect the provisions of the Army Act, \* \*<sup>2</sup> section 151,<sup>3</sup> or the rights or liabilities of any person under any decree passed before that day.

44 & 45  
Vict , c 58.

**Repeal of**           2. On and from the said day the enactments specified in the first sched-  
**enactments.**       ule hereto annexed shall be repealed to the extent mentioned therein.

But all Courts constituted, appointments made and securities given under any of the said enactments shall, so far as may be, be deemed to have been respectively constituted, made and given under this Act.

**References in**       All references to any enactment hereby repealed made in Acts passed  
**previous**       prior to the said day shall be read, so far as may be practicable, as if made  
**Acts.**       to this Act or the corresponding provisions hereof.

<sup>1</sup> For the Statement of Objects and Reasons, *see* Gazette of India, 1880, Pt V, p 376; for first Report of the Select Committee, *see ibid*, 1881, Pt V, p 381; for further Report of the Select Committee, *see ibid*, 1882, Pt V, p 3; for proceedings in Council, *see ibid*, Supplement, 1880, pp 1394 and 1433; *ibid*, 1882, Supplement, p 204; and *ibid*, 1882, Extra Supplement, p 43

<sup>2</sup> The figures "1881" were repealed by the Repealing and Amending Act, 1891 (XII of 1891), printed, General Acts, Vol. VI

<sup>3</sup> Printed, Collection of Statutes relating to India, Ed 1881, Supplement, p 91.

(Chapter I.—Preliminary Secs. 3-4. Chapter II—Constitution and Officers of the Court. Secs. 5-6.)

3. In Act No. XXIII of 1850<sup>1</sup> (for securing the Land-revenue of Calcutta), section 3, for the word and figures "Act VII, 1847," the words and figures "the Presidency Small Cause Courts Act, 1882, Chapter VIII," shall be substituted; the words "as provided by the said Act" shall be repealed; and for each of the expressions "a Commissioner of the Court for recovery of small debts referred to in the said Act," and "the said Commissioners," the words "the Judges of the Court of Small Causes at Calcutta," shall be substituted.

Amendment  
of Acts

XIV of 1882

In the Code of Civil Procedure,<sup>2</sup> section 8, after the word and figures "Chapter XXXIX" the words and figures "and by the Presidency Small Cause Courts Act, 1882," shall be inserted.

4. In this Act, "the Small Cause Court" means the Court of Small Causes constituted under this Act in the town of Calcutta, Madras or Bombay, as the case may be.

"Small  
Cause Court"  
defined

## CHAPTER II.

### CONSTITUTION AND OFFICERS OF THE COURT.

5. There shall be in each of the towns of Calcutta, Madras and Bombay a Court, to be called the Court of Small Causes of Calcutta, Madras<sup>3</sup> or Bombay, as the case may be.

Courts of  
Small Causes  
established

6. The Small Cause Court shall be deemed to be a Court subject to the superintendence of the High Court of Judicature at Fort William, Madras or Bombay, as the case may be, within the meaning of the Letters Patent, respectively, dated the 28th day of December, 1865, for such High Courts, and within the meaning of the <sup>2</sup>Code of Civil Procedure <sup>4</sup>[and to be a Court subordinate to the High Court within the meaning of section 6 of the Legal Practitioners Act, 1879,<sup>5</sup>] and the High Court shall have, in respect of the Small Cause Court, the same powers as it has under the twenty-

Court to be  
deemed  
under super-  
intendence,  
etc., of High  
Court.

XVIII of  
1879.

<sup>1</sup> Printed, Bengal Code, Vol I, Ed 1839, p 282.

<sup>2</sup> Printed *supra*, p 262

<sup>3</sup> For Proclamation declaring the constitution of the Madras Court of Small Causes, see Madras List of Local Rules and Orders, Ed 1898, p 204.

<sup>4</sup> These words were added by the Presidency Small Cause Courts Act, 1895 (I of 1895), s. 2, printed, General Acts, Vol. VI

<sup>5</sup> Printed, General Acts, Vol. III, Ed. 1898, p. 267

## (Chapter II.—Constitution and Officers of the Court. Secs. 7-8A.)

fourth and twenty-fifth of Victoria, chapter 104, section 15,<sup>1</sup> in respect of Courts subject to its appellate jurisdiction. 24 & 25  
Vict , c 104.

Appoint-  
ment, sus-  
pension and  
removal of  
Judges

7. Subject to the control of the Governor General in Council, the Local Government may from time to time, by notification in the official Gazette, appoint a person to be Chief Judge, and so many other persons as it thinks fit to be judges, of the Small Cause Court:

<sup>2</sup>[Provided that no person shall be appointed to be a Judge of such Court, or be authorized to exercise the powers of a Judge of such Court, unless he is—

(a) an advocate of a High Court of Judicature established under the Indian High Courts Act, 1861,<sup>3</sup> or

(b) a vakil or attorney of any such High Court, or

(c) a Judge of a Court of Civil Judicature of not less than five years' standing :

24 & 25  
Vict , c 104

and that not less than one-third of the persons so appointed, including the Chief Judge, shall be advocates of one of the said High Courts ]

The Local Government may by a like notification suspend and, with the previous sanction of the Governor General in Council, remove any Judge so appointed.

\* \* \* \* \*

Rank and  
precedence  
of Judges

8. The Chief Judge shall be the first of the Judges in rank and precedence.

The other Judges shall have rank and precedence as the Local Government may, from time to time, direct

Performance  
of duties of  
absent  
Judge.

8A.<sup>5</sup> During any absence of the Chief Judge the Local Government may appoint any of the Judges of the Court who may be qualified for the appointment of Chief Judge to perform the duties of Chief Judge, and may appoint some other duly qualified person to act as a Judge of the said Court (until the Chief Judge has returned from such absence, and during any absence of a Judge of the said Court the Local Government may appoint a duly qualified person to act as a Judge of the said Court), and every person so appointed shall be authorized to perform the duties of a Judge of the said Court until the return of the absent Judge or until the Local Government shall see cause to cancel the appointment of such acting Judge.

<sup>1</sup> The Indian High Courts Act, 1861, printed, Collection of Statutes relating to India, Vol II, Ed 1881, p 716

<sup>2</sup> This proviso was substituted for the original proviso by the Presidency Small Cause Courts Act, 1895 (I of 1895), s 3 (2), printed, General Acts, Vol VI

<sup>3</sup> See the Collection of Statutes relating to India, Vol II, Ed 1881, p 713

<sup>4</sup> The last paragraph was repealed by the Presidency Small Cause Courts Act, 1895 (I of 1895), s 3 (2).

<sup>5</sup> S. 8A was inserted by Act I of 1895, s. 4

(Chapter II.—*Constitution and Officers of the Court. Secs 9-13*)

9.<sup>1</sup> (1) The High Court may, from time to time, by rules<sup>2</sup> having the force of law,—

Procedure  
and practice  
of Small  
Cause Court.

(a) prescribe the procedure to be followed and the practice to be observed by the Small Cause Court either in supersession of or in addition to any provisions which were prescribed with respect to the procedure or practice of the Small Cause Court on or before the thirty-first day of December, 1894, in or under this Act or any other enactment for the time being in force, and

(b) cancel or vary any such rule or rules.

Rules made under this section may provide, among other matters, for the exercise by one or more of the Judges of the Small Cause Court of any powers conferred on the Small Cause Court by this Act or any other enactment for the time being in force.

(2) The law, and any rules and declarations made, or purporting to be made, thereunder, with respect to procedure or practice, in force or treated as in force in the Small Cause Court on the thirty-first day of December 1894, shall be in force, unless and until cancelled or varied by rules made by the High Court under this section.

10. Subject to such rules, the Chief Judge may, from time to time, make such arrangements as he thinks fit for the distribution of the business of the Court among the various Judges thereof.

Chief Judge  
to distribute  
business of  
Court

11. Save as hereinafter otherwise provided, when two or more of the Judges sitting together differ on any question, the opinion of the majority shall prevail; and if the Court is equally divided, the Chief Judge, if he is one of the Judges so differing, or, in his absence, the Judge first in rank and precedence of the Judges so differing, shall have the casting voice.

Procedure  
in case of  
difference of  
opinion

12. The Small Cause Court shall use a seal of such form and dimensions as are for the time being prescribed by the Local Government<sup>3</sup>

Seal to be  
used.

13. The Local Government may, from time to time, appoint an officer

Appointment  
of Registrar

<sup>1</sup> This section was substituted for the original s 9 by the Presidency Small Cause Courts Act, 1895 (I of 1895), s 5, printed, General Acts, Vol VI

<sup>2</sup> For notifications prescribing such rules in—

Bombay . . . see Bombay List of Local Rules and Orders, Ed. 1896, Vol I,  
pp 410 and 422;

Madras . . . see Madras List of Local Rules and Orders, Ed 1898, Vol I,  
p 204

<sup>3</sup> For notifications under this section in—

Bombay . . . see Bombay List of Local Rules and Orders, Ed 1896, Vol I,  
p 422;

Madras . . . see Madras List of Local Rules and Orders, Ed 1898, Vol I,  
p 204.

and minis-  
terial officers.

to be called the Registrar of the Court, and to be the chief ministerial officer of the Court ;

and the Chief Judge may, from time to time, subject to the control of the Local Government, appoint as many clerks, bailiffs and other ministerial officers as may be necessary for the administration of justice by the Court and for the exercise and performance of the powers and duties conferred and imposed on it by this Act or any other law for the time being in force.

Powers and  
duties of  
such officers

The Registrar and other officers so appointed shall exercise such powers, and discharge such duties, of a ministerial nature, as the Chief Judge may, from time to time, by rule, direct

The Chief Judge may suspend or remove any Registrar or other officer so appointed, but the removal of any Registrar or officer drawing a monthly salary of one hundred rupees or upwards shall be subject to the orders of the Local Government

Registrar  
may be in-  
vested with  
powers of a  
Judge in  
suits not  
exceeding  
twenty  
rupees.

14. The Local Government may invest the Registrar with the powers of a Judge under this Act for the trial of suits in which the amount or value of the subject-matter does not exceed twenty rupees. And, subject to the orders of the Chief Judge, any Judge of the Small Cause Court may, whenever he thinks fit, transfer from his own file to the file of the Registrar any suit which the latter is competent to try

<sup>1</sup> [*Explanation* —For the purposes of this section an application for possession under section 41 shall be deemed to be a suit ]

Judge or  
other officer  
not to prac-  
tice or trade

15. No Judge or other officer appointed under this Act shall, during his continuance as such Judge or officer, either by himself or as a partner of any other person, practice or act, either directly or indirectly, as an advocate, attorney, vakil or other legal practitioner, or be concerned, either on his own account or for any other person, or as the partner of any other person, in any trade or profession.

Any such Judge or officer so practising, acting or concerned shall be deemed to have committed an offence under section 168 of the Indian Penal Code <sup>2</sup>

XLV of 1860.

Nothing herein contained shall be deemed to prohibit any such Judge or officer from being a member of any company incorporated or registered under Royal Charter, Letters Patent, Act of Parliament or Act of any British Indian legislature.

<sup>1</sup> This *Explanation* was added by the Presidency Small Cause Courts Act, 1895 (I of 1895), s 6, printed, General Acts, Vol VI

<sup>2</sup> Printed, General Acts, Vol I, Ed 1898, p 240

(Chapter III.—*Law administered by the Court* Sec 16. Chapter IV.—*Jurisdiction in respect of Suits.* Secs. 17-18)

## CHAPTER III

## LAW ADMINISTERED BY THE COURT.

16. All questions, other than questions relating to procedure or practice, which arise in suits or other proceedings under this Act in the Small Cause Court shall be dealt with and determined according to the law for the time being administered by the High Court in the exercise of its ordinary original civil jurisdiction.

Questions arising in suits, etc., under Act to be decided according to law administered by High Court.

## CHAPTER IV.

## JURISDICTION IN RESPECT OF SUITS

17. The local limits of the jurisdiction of each of the Small Cause Courts shall be the local limits for the time being of the ordinary original civil jurisdiction of the High Court.

Local Limits of jurisdiction of Court.

18. Subject to the exceptions in section 19, the Small Cause Court shall have jurisdiction to try all suits of a civil nature—

Suits in which Court has jurisdiction

when the amount or value of the subject-matter does not exceed two thousand rupees: and

- (a) the cause of action has arisen, either wholly or in part, within the local limits of the jurisdiction of the Small Cause Court, and the leave of the Court has, for reasons to be recorded by it in writing, been given before the institution of the suit; or
- (b) all the defendants, at the time of the institution of the suit, actually and voluntarily reside, or carry on business, or personally work for gain, within such local limits; or
- (c) any of the defendants, at the time of the institution of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, within such local limits, and either the leave of the Court has been given before the institution of the suit, or the defendants who do not reside, or carry on business, or personally work for gain as aforesaid, acquiesce in such institution:

<sup>1</sup>[Provided that where the cause of action has arisen wholly within the local limits aforesaid, and the Court refuses to give leave for the institution of the suit, it shall record in writing its reasons for such refusal]

<sup>1</sup> This proviso was added by the Presidency Small Cause Courts Act, 1895 (1 of 1895), s. 7, printed, General Acts, Vol VI

*Explanation I.*—When in any suit the sum claimed is, by a set-off admitted by both parties, reduced to a balance not exceeding two thousand rupees, the Small Cause Court shall have jurisdiction to try such suit

*Explanation II*—Where a person has a permanent dwelling at one place and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging

*Explanation III.*—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British India, or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place

Plaintiff may  
abandon suit  
against de-  
fendant resi-  
dent out of  
jurisdiction.

<sup>1</sup>18A. The Small Cause Court may allow a plaintiff at or before the first hearing of a suit in which a joint and several liability is alleged on a cause of action arising either wholly or in part within the local limits of the jurisdiction of the Court to abandon the suit as against any defendant who does not reside or carry on business or personally work for gain within such local limits, and to sue for a decree against such defendants only as do so reside, carry on business or personally work for gain

Suits in  
which Court  
has no juris-  
diction.

19. The Small Cause Court shall have no jurisdiction in—

- (a) suits concerning the assessment or collection of the revenue;
- (b) suits concerning any act ordered or done by the Governor General in Council or the Local Government, or by the Governor General or a Governor, or by any Member of the Council of the Governor General or of the Governor of Madras or Bombay, in his official capacity, or by any person by order of the Governor General in Council or the Local Government;
- (c) suits concerning any act ordered or done by any Judge or judicial officer in the execution of his office, or by any person in pursuance of any judgment or order of any Court or any such Judge or judicial officer;
- (d) suits for the recovery of immoveable property;
- (e) suits for the partition of immoveable property;
- (f) suits for the foreclosure or redemption of a mortgage of immoveable property;
- (g) suits for the determination of any other right to or interest in immoveable property,
- (h) suits for the specific performance or rescission of contracts;

<sup>1</sup> S 18A was added by the Presidency Small Cause Courts Act, 1895 (I of 1895), s 8, printed, General Acts, Vol VI.

*(Chapter IV—Jurisdiction in respect of Suits. Sec. 19A.)*

- (v) suits to obtain an injunction,
- (j) suits for the cancellation or rectification of instruments;
- (k) suits to enforce a trust,
- (l) suits for a general average loss and suits on policies of insurance on sea-going vessels;
- (m) suits for compensation in respect of collisions on the high seas;
- (n) suits for compensation for the infringement of a patent, copy-right or trade-mark;
- (o) suits for a dissolution of partnership or for an account of partnership-transactions,
- (p) suits for an account of property and its due administration under the decree of the Court,
- (q) suits for compensation for libel, slander, malicious prosecution, adultery or breach of promise of marriage;
- (r) suits for the restitution of conjugal rights, for the recovery of a wife, or for a divorce;
- (s) suits for declaratory decrees;
- (t) suits for possession of a hereditary office;
- (u) suits against Sovereign Princes or Ruling Chiefs, or against Ambassadors or Envoys of Foreign States;
- (v) suits on any judgment of a High Court;
- (w) suits the cognizance whereof by the Small Cause Court is barred by any law for the time being in force.

**19A.** Whenever the Court finds that for want of jurisdiction it cannot finally determine the question at issue in the suit, it may at any stage of the proceedings return the plaint to be presented to a Court having jurisdiction to determine the question. When the Court so returns a plaint, it shall comply with the provisions of the second paragraph of section 57 of the Code of Civil Procedure<sup>2</sup> and make such order with respect to costs as it may think just, and the Court shall for the purposes of the Indian Limitation Act, 1877,<sup>3</sup> be deemed to have been unable to entertain the suit by reason of defect of jurisdiction. When a plaint so returned is afterwards presented to a High Court, credit shall be given to the plaintiff for the amount of the court-fee paid in the Small Cause Court in respect of the plaint in the levy of any fees which according to the practice of the High Court are credited to the Government

Return of  
plaint.

XIV of 1882

XV of 1877

<sup>1</sup> S 19A was added by the Presidency Small Cause Courts Act, 1895 (I of 1895), s 9, printed, General Acts, Vol VI

<sup>2</sup> Printed, *supra*, p 262

<sup>3</sup> Printed, General Acts, Vol III, Ed 1896, p 75

Court may  
by consent  
try suits  
beyond pecu-  
niary limits  
of jurisdic-  
tion.

20. When the parties to a suit which, if the amount or value of the subject-matter thereof did not exceed two thousand rupees, would be cognizable by the Small Cause Court, have entered into an agreement<sup>1</sup> in writing that the Small Cause Court shall have jurisdiction to try such suit, the Court shall have jurisdiction to try the same, although the amount or value of the subject-matter thereof may exceed two thousand rupees.

Every such agreement shall be filed in the Small Cause Court, and, when so filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by its decision in such suit.

Certain suits  
may be insti-  
tuted in High  
Court.

21. All suits to which an officer of the Small Cause Court is, as such, a party, except suits in respect of property taken in execution of its process, or the proceeds or value thereof<sup>2</sup> [and all suits whereof the amount or value of the subject-matter exceeds one thousand rupees] may be instituted in the High Court at the election of the plaintiff as if this Act had not been passed.

Costs when  
plaintiff sues  
in High  
Court in  
other cases  
cognizable by  
Small Cause  
Court.

22. If any suit cognizable by the Small Cause Court, other than a suit to which section 21 applies, is instituted in the High Court, and if in such suit the plaintiff obtains, in the case of a suit founded on contract, a decree for any matter of an amount or value less than<sup>3</sup> [one thousand] rupees, and in the case of any other suit a decree for any matter of an amount or value of less than three hundred rupees, no costs shall be allowed to the plaintiff;

and if in any such suit the plaintiff does not obtain a decree, the defendant shall be entitled to his costs as between attorney and client

The foregoing rules shall not apply to any suit in which the Judge who tries the same certifies that it was one fit to be brought in the High Court.

## CHAPTER V.

### PROCEDURE IN SUITS.

23. [*Portions of Civil Procedure Code extending to Court*] *Rep. by the Presidency Small Cause Courts Act, 1895 (I of 1895), s. 12.*

No written  
statement

24. Except in cases of set-off under the Code of Civil Procedure,<sup>4</sup> sec- XIV of 1882.

<sup>1</sup> As to additional fee payable on the filing of such agreement, see s 71, *infra*, p. 610.

<sup>2</sup> These words were inserted by the Presidency Small Cause Courts Act, 1895 (I of 1895), s 10, printed, General Acts, Vol VI

<sup>3</sup> These words were substituted for the words "two thousand" by the Presidency Small Cause Courts Act, 1895 (I of 1895), s 11, printed, General Acts, Vol VI

<sup>4</sup> Printed, *supra*, p. 262

tion 111, no written statement shall be received unless required by the Court.

except in  
cases of set-  
off

25. When a period of eight days from the decision of a suit has expired without any application for a new trial or re-hearing of such suit having been made or when any such application has been made within such period and such application has been refused, or the new trial or re-hearing (as the case may be) has ended, any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record shall, unless the document is impounded under section 143 of the Code of the Civil Procedure,<sup>1</sup> be entitled to receive back the same :

Return of  
documents  
admitted in  
evidence.

XIV of 1882.

Provided that a document may be returned at any time before any of such events on such terms as the Court may direct provided also that no document shall be returned which, by force of the decree, has become void or useless.

On the return of a document which has been admitted in evidence, a receipt shall be given, by the party receiving it, in a receipt-book to be kept for the purpose.

26. In any suit in which the defendant appears and does not admit the claim, and the plaintiff does not obtain a decree for the full amount of his claim, the Small Cause Court may in its discretion order the plaintiff to pay to the defendant, by way of satisfaction for his trouble and attendance, such sum as it thinks fit.

Compensa-  
tion payable  
by plaintiff  
to defendant  
in certain  
cases

When any claim preferred, or objection made, under section 278 of the Code of Civil Procedure<sup>1</sup> is disallowed, the Small Cause Court may in its discretion order the person preferring or making such claim or objection to pay to the decree-holder, or to the judgment-debtor, or to both, by way of satisfaction as aforesaid, such sum or sums as it thinks fit.

XIV of 1882.

And when any claim or objection is allowed the Court may award such compensation by way of damages to the claimant or objector as it thinks fit, and the order of the Court awarding or refusing such compensation shall bar any suit in respect of injury caused by the attachment

Any order under this section may, in default of payment of the amount payable thereunder, be enforced by the person in whose favour it is made against the person against whom it is made as if it were a decree of the Court.

<sup>1</sup> Printed, *supra*, p 262

Decree-holder to accompany officer executing warrant

27. Whenever the Small Cause Court issues a warrant for the arrest of a judgment-debtor or the attachment of his property, the decree-holder, or some other person on his behalf, shall accompany the officer of the Court entrusted with the execution of such warrant, and shall point out to such officer the judgment-debtor or the property to be attached, as the case may be.

Things attached to immoveable property and removeable by tenant to be deemed moveable in execution.

28. When the judgment-debtor under any decree of the Small Cause Court is a tenant of immoveable property, anything attached to such property, and which he might before the termination of his tenancy lawfully remove without the permission of his landlord, shall, for the purpose of the execution of such decree, be deemed to be moveable property, and may, if sold in such execution, be served by the purchaser, but shall not be removed by him from the property until he has done to the property whatever the judgment-debtor would have been bound to do to it if he had removed such thing.

Discharge of judgment-debtor on sufficient security.

29. Whenever any judgment-debtor, who has been arrested or whose property has been seized in execution of a decree of the Small Cause Court, offers security to the satisfaction of such Court for payment of the amount which he has been ordered to pay and the costs, the Court may order him to be discharged or the property to be released.

Court may in certain cases suspend execution of decree.

30. Whenever it appears to the Small Cause Court that any judgment-debtor under its decree is unable, from sickness, poverty or other sufficient cause, to pay the amount of the decree, or, if such Court has ordered the same to be paid in instalments, the amount of any instalment thereof, it may, from time to time, for such time and upon such terms as it thinks fit, suspend the execution of such decree and discharge the debtor, or make such order as it thinks fit.

Execution of decree of Small Cause Court by other Courts.

31. If the judgment-debtor under any decree of the Small Cause Court has not, within the local limits of its jurisdiction, moveable property sufficient to satisfy the decree, the Court may, on the application of the decree-holder, send the decree for execution—

(a) in the case of execution against immoveable property situate within such local limits—<sup>1</sup> [to the Madras City Civil Court or the High Court of Judicature at Fort William or Bombay, as the case may be:]

<sup>1</sup> These words were substituted for the words "to the High Court" by the Madras City Civil Court Act, 1892 (VII of 1892), s 12.

*(Chapter V.—Procedure in Suits. Secs. 32-36)*

(b) in all other cases,—to any Civil Court within the local limits of whose jurisdiction such judgment-debtor, or any moveable or immoveable property of such judgment-debtor, may be found.

XIV of 1882 The procedure prescribed by the Code of Civil Procedure<sup>1</sup> for the execution of decrees by Courts other than those which made them shall be the procedure followed in such cases. Procedure when decrees transferred.

XIV of 1882. 32. Notwithstanding anything contained in the Code of Civil Procedure<sup>1</sup> as applied by this Act, any minor may institute a suit for any sum of money, not exceeding five hundred rupees, which may be due to him under section 70 of the Indian Contract Act, 1872,<sup>2</sup> for wages or piece-work or for work as a servant, in the same manner as if he were of full age. Minors may sue in certain cases as if of full age.

IX of 1872.

XIV of 1882. 33. Any non-judicial or quasi-judicial act which the Code of Civil Procedure<sup>1</sup> as applied by this Act requires to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394 of that Code as so applied, may be done by the Registrar of the Small Cause Court or by such other officer of that Court as that Court may, from time to time, appoint in this behalf. Power to delegate non-judicial duties

The High Court may, from time to time, by rule declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.<sup>3</sup>

34. The suits cognizable by the Registrar under section 14 shall be heard and determined by him in like manner in all respects as a Judge of the Court might hear and determine the same : Registrar to hear and determine suits like a Judge

Provided that, subject to the control of the Chief Judge, any Judge of the Court may, whenever he thinks fit, transfer to his own file any suit on the file of the Registrar. Proviso.

35. The Registrar may receive applications for the execution of decrees of any value passed by the Court and may commit and discharge judgment-debtors, and make any order in respect thereof which a Judge of the Court might make under this Act. Registrar may execute all decrees with the same powers as a Judge.

36. Every decree and order made by the Registrar in any suit or proceeding shall be subject to the same provisions in regard to new trial as if made by a Judge of the Court. Decrees and orders of Registrar to be subject to new trial as if made by a Judge.

<sup>1</sup> Printed, *supra*, p. 262.

<sup>2</sup> Printed, General Acts, Vol II, p. 299

<sup>3</sup> For rules in Madras declaring certain duties to be non-judicial or quasi-judicial acts, which may be done by the Registrar of the Small Cause Court, see Madras List of Local Rules and Orders, Vol I, Ed 1898, p. 204.

## <sup>1</sup> CHAPTER VI.

### NEW TRIALS AND APPEALS.

General final-  
ity of decrees  
and orders of  
Small Cause  
Court.

New trial of  
contested  
cases.

37. Save as otherwise provided by this Chapter or by any other enactment for the time being in force, every decree and order of the Small Cause Court in a suit shall be final and conclusive.

38. Where a suit has been contested, the Small Cause Court may, on the application of either party, made within eight days from the date of the decree or order in the suit (not being a decree passed under section 522 of the Code of Civil Procedure),<sup>2</sup> order a new trial to be held, or alter, set aside or reverse the decree or order, upon such terms as it thinks reasonable, and may, in the meantime, stay the proceedings

XIV of 1882.

*Explanation*—Every suit shall be deemed to be contested in which the decree is made otherwise than by consent of or in default of appearance by the defendant.

Removal of  
certain causes  
into High  
Court.

39. (1) In any suit instituted in a Small Cause Court in which the amount or value of the subject-matter exceeds the sum of one thousand rupees, the defendant or any one of the defendants may, before the day fixed by the summons for the appearance of the defendant or within eight days after the service of the summons on him, whichever period shall last expire, apply *ex parte* on an affidavit setting forth the facts on which he relies for his defence to a Judge of the High Court for an order removing the cause into the High Court.

(2) Unless the Judge is of opinion that the application has been made solely for the purpose of delay, the applicant shall be entitled to such order as of right, but it shall be lawful for the Judge, if he shall think fit, in and by such order to require the applicant to give security to a reasonable amount to be specified in the order for the payment of any costs which may become payable by him to the plaintiff in respect of the said suit, and such Judge may also, if he shall think fit, declare that the removal directed by such order shall be conditional upon the completion of such security within a reasonable time to be prescribed in the order.

(3) If the applicant fail or neglect to complete the required security (if any) within the prescribed time (if any), the said order shall be discharged and the suit shall proceed in the Small Cause Court as if such order had never been made.

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<sup>1</sup> This Chapter was substituted for the original Ch VI by the Presidency Small Cause Courts Act, 1895 (I of 1895), s 13, printed, General Acts, Vol VI

<sup>2</sup> Printed, *supra*, p 262

(Chapter VI—*New Trials and Appeals. Sec 40* Chapter VII—*Recovery of Possession of Immoveable Property. Sec. 41.*)

(4) If the plaintiff in any case which has been removed under this section into the High Court has abandoned a portion of his claim in order to be able to bring the suit within the jurisdiction of a Small Cause Court, he shall be permitted to revive the portion of his claim so abandoned

40. (1) When a suit has been removed into the High Court under the last foregoing section, it shall be heard and disposed of by such Court in the exercise of its original jurisdiction, and the said Court shall have all the same powers and jurisdiction in respect thereof as if it had been originally instituted in such Court

Rules with respect to suits removed under the last foregoing section

(2) In every suit so removed as aforesaid the affidavit filed under section 39, sub-section (1), shall be treated as a written statement of the defendant tendered under section 110 of the Code of Civil Procedure<sup>1</sup> unless the Court shall otherwise order

XIV of 1882.

(3) In every suit so removed as aforesaid credit shall be given to the plaintiff for the amount of the court-fee paid in the Small Cause Court in respect of the plaint in the levy of any fees which according to the practice of the High Court are payable to the Government

## CHAPTER VII.

### RECOVERY OF POSSESSION OF IMMOVEABLE PROPERTY

41. When any person has had possession of any immoveable property situate within the local limits of the Small Cause Court's jurisdiction and of which the annual value at a rack-rent does not exceed one thousand rupees, as the tenant, or by permission, of another person, or of some person through whom such other person claims,

Summons against person occupying property without leave.

and such tenancy or permission has determined or been withdrawn,

and such tenant or occupier or any person holding under or by assignment from him (hereinafter called the occupant) refuses to deliver up such property in compliance with a request made to him in this behalf by such other person,

such other person (hereinafter called the applicant) may apply<sup>2</sup> to the Small Cause Court for a summons against the occupant, calling upon him to show cause, on a day therein appointed, why he should not be compelled to deliver up the property.

<sup>1</sup> Printed, *supra*, p 262

<sup>2</sup> For fee on such application, see s 71, *infra*, p 610

Service of  
summons

42. The summons shall be served on the occupant in the manner provided by the Code of Civil Procedure<sup>1</sup> for the service of a summons on a defendant. XIV of 1882

Order for  
possession

43 If the occupant does not appear at the time appointed and show cause to the contrary, the applicant shall, if the Small Cause Court is satisfied that he is entitled to apply under section 41, be entitled to an order addressed to a bailiff of the Court directing him to give possession of the property to the applicant on such day as the Court thinks fit to name in such order.

*Explanation.*—If the occupant proves that the tenancy was created or permission granted by virtue of a title which determined previous to the date of the application, he shall be deemed to have shown cause within the meaning of this section.

Such order  
to justify  
bailiff enter-  
ing on prop-  
erty and  
giving pos-  
session  
Bar to pro-  
ceedings  
against  
Judge or  
officer for  
issuing, etc,  
order or  
summons.

44. Any such order shall justify the bailiff to whom it is addressed in entering after the hour of six in the morning and before the hour of six in the afternoon upon the property named therein, with such assistants, as he thinks necessary, and giving possession of such property to the applicant: and no suit or prosecution shall be maintainable against any Judge or officer of the Small Cause Court by whom any such order as aforesaid was issued, or against any bailiff or other person by whom the same was executed, or by whom any such summons as aforesaid was served, for the issue, execution or service of any such order or summons, by reason only that the applicant was not entitled to the possession of the property.

Applicant,  
if entitled to  
possession,  
not to be  
deemed tres-  
passer for  
any error in  
proceedings.  
Occupant  
may sue for  
compensa-  
tion.

45 When the applicant, at the time of applying for any such order as aforesaid, was entitled to the possession of such property, neither he nor any person acting in his behalf shall be deemed, on account of any error, defect or irregularity in the mode of proceeding to obtain possession thereunder to be a trespasser; but any person aggrieved may bring a suit for the recovery of compensation for any damage which he has sustained by reason of such error, defect or irregularity:

when no such damage is proved, the suit shall be dismissed; and when such damage is proved but the amount of the compensation assessed by the Court does not exceed ten rupees, the Court shall award to the plaintiff no more costs than compensation, unless the Judge who tries the case certifies that in his opinion full costs should be awarded to the plaintiff

Liability of  
applicant  
obtaining

46. Nothing herein contained shall be deemed to protect any applicant obtaining possession of any property under this chapter from a suit by any

<sup>1</sup> Printed, *supra*, p 262.

(Chapter VII—*Recovery of Possession of Immoveable Property.*• Secs 47-49. Chapter VIII.—*Distresses. Sec. 50*)

person deeming himself aggrieved thereby, when such applicant was not at the time of applying for such order as aforesaid entitled to the possession of such property

order when not entitled.

And when the applicant was not, at the time of applying for any such order as aforesaid, entitled to the possession of such property, the application for such order, though no possession is taken thereunder, shall be deemed to be an act of trespass committed by the applicant against the occupant.

Application for order in such case an act of trespass

47. Whenever on an application being made under section 41 the occupant binds himself, with two sureties, in a bond for such amount as the Small Cause Court thinks reasonable, having regard to the value of the property and the probable costs of the suit next hereinafter mentioned, to institute without delay a suit in the High Court against the applicant for compensation for trespass and to pay all the costs of such suit in case he does not prosecute the same or in case judgment therein is given for the applicant, the Small Cause Court shall stay the proceedings on such application until such suit is disposed of.

Stay of proceedings on occupant giving security to bring suit against applicant.

If the occupant obtains a decree in any such suit against the applicant, such decree shall supersede the order (if any) made under section 43

Nothing contained in section 22 shall apply to suits under this section.

48. In all proceedings under this chapter, the Small Cause Court shall, as far as may be and except as herein otherwise provided, follow the procedure prescribed for a Court of first instance by the Code of Civil Procedure.<sup>1</sup>

Proceedings to be regulated by Code of Civil Procedure

49. Recovery of the possession of any immoveable property under this chapter shall be no bar to the institution of a suit in the High Court for trying the title thereto.

Recovery of possession no bar to suit to try title

## CHAPTER VIII.

### DISTRESSES.

50. This Chapter extends to every place within the local limits of the ordinary original civil jurisdictions of the High Courts of Judicature at Fort William, Madras and Bombay. But nothing contained in this Chapter applies—

Local extent of Chapter.

(a) to any rent due to Government;

Saving of certain rents.

<sup>1</sup> Printed, *supra*, p 262.

(b) to any rent which has been due for more than twelve months before the application mentioned in section 53.

Appointment  
of bailiffs  
and apprais-  
ers

51. The Judges of the Small Cause Court may appoint four or more persons to be bailiffs and appraisers for the purpose of this chapter, and may, from time to time, with the previous sanction of the Local Government, fix such remuneration for the services of such officers as the said Judges think fit, and may suspend or remove them

Security to  
be given by  
appointees

52. The persons so appointed shall give security, to be approved by the said Judges, faithfully to discharge the duties of their office, and they shall be deemed to be public servants within the meaning of the Indian Penal Code <sup>1</sup>

XLV of 1860.

Application  
for distress-  
warrant.

53. Any person claiming to be entitled to arrears of rent of any house or premises to which this chapter extends, or his duly constituted attorney, may apply to any Judge of the Small Cause Court, or to the Registrar of the Small Cause Court, for such warrant as is hereinafter mentioned.

The application shall be supported by an affidavit or affirmation to the effect of the form (marked A) in the third schedule hereto annexed.

Issue of dis-  
tress-war-  
rant.

54. The Judge or Registrar may thereupon issue a warrant under his hand and seal and returnable within six days, to the effect of the form (marked B) contained in the same schedule, addressed to any one of such bailiffs.

The Judge or Registrar may at his discretion, upon personal examination of the person applying for such warrant, decline to issue the same.

Time for  
distress.

55. Every distress under this chapter shall be made after sunrise and before sunset, and not at any other time

What places  
bailiff may  
force open

56. The bailiff directed to make the distress may force open any stable, outhouse, or other building, and may also enter any dwelling-house the outer door of which may be open, and may break open the door of any room in such dwelling-house for the purpose of seizing property liable to be seized under this chapter :

Provided that he shall not enter or break open the door of any room appropriated for the *zanàna* or residence of women, which by the usage of the country is considered private.

Property  
which may  
be seized

57. In pursuance of the warrant aforesaid the bailiff shall seize the moveable property found in or upon the house or premises mentioned in the warrant and belonging to the person from whom the rent is claimed (hereinafter called the debtor), or such part thereof as may, in the bailiff's

*(Chapter VIII.—Distresses. Secs. 58-61)*

judgment, be sufficient to cover the amount of the said rent, together with the costs of the said distress :

Provided that the bailiff shall not seize—

- (a) things in actual use ; or
- (b) tools and implements not in use, where there is other moveable property in or upon the house or premises sufficient to cover such amount and costs ; or
- (c) the debtor's necessary wearing apparel ; or
- (d) goods in the custody of the law.

58. The bailiff may impound or otherwise secure the property so seized in or on the house or premises chargeable with the rent.

Impounding  
distress.

59. On seizing any property under section 57 the bailiff shall make an inventory of such property, and shall give a notice in writing to the effect of the form (marked C) in the third schedule hereto annexed to the debtor, or to any other person upon his behalf in or upon the said house or premises

Inventory.  
Notice of in-  
tended ap-  
praisement  
and sale

The bailiff shall, as soon as may be, file in the Small Cause Court copies of the said inventory and notice

Copies of in-  
ventory and  
notice to be  
filed.  
Application  
to discharge  
or suspend  
warrant.

60. The debtor or any other person alleging himself to be the owner of any property seized under this chapter, or the duly constituted attorney of such debtor or other person, may, at any time within five days from such seizure, apply to any Judge of the said Court to discharge or suspend the warrant, or to release a distrained article, and such Judge may discharge or suspend such warrant or release such article accordingly, upon such terms as he thinks just,

and any of the Judges of the said Court may in his discretion give reasonable time to the debtor to pay the rent due from him

Upon any such application, the costs attending it and attending the issue and execution of the warrant shall be in the discretion of the Judge, and shall be paid as he directs.

61. If any claim is made to, or in respect of, any property seized under this Chapter, or in respect of the proceeds or value thereof, by any person not being the debtor, the Registrar of the Small Cause Court, upon the application of the bailiff who seized the property, may issue a summons calling before the Court the claimant and the person who obtained the warrant.

Claim to  
goods dis-  
trained made  
by a stranger.

And thereupon any suit which may have been brought in the High Court in respect of such claim shall be stayed, and any Judge of the High Court, on proof of the issue of such summons and that the property was so

distraigned, may order the plaintiff to pay the costs of all proceedings in such suit after the issue of such summons.

And a Judge of the Small Cause Court shall adjudicate upon such claim and make such order between the parties in respect thereof and of the costs of the proceedings as he thinks fit;

and such order shall be enforced as if it were an order made in a suit brought in such Court.

The procedure in Small Cause Courts in cases under this section shall conform, as far as may be, to the procedure in an ordinary suit in such Courts.

Power to  
award com-  
pensation  
to debtor or  
claimant.

62. In any case under section 60 or section 61 the Judge by whom the case is heard may award such compensation by way of damages to the applicant or claimant (as the case may be) as the Judge thinks fit,

and may for that purpose make any enquiry he thinks necessary;

and the order of the Judge awarding or refusing such compensation shall bar any suit for the recovery of compensation for any damage caused by the distress.

Power to  
transfer to  
High Court  
cases involv-  
ing more  
than one  
thousand  
rupees.

63. In any case under section 60 or section 61, if the value of the subject-matter in dispute exceeds one thousand rupees, the applicant or claimant may apply to the High Court to transfer the case to itself, and the High Court, on being satisfied that it is expedient that the case should be disposed of by itself, may direct the case to be transferred accordingly, and may thereupon alter or set aside any order passed in the case by a Judge of the Small Cause Court, and may make such order therein as the High Court thinks fit.

Every application under this section shall be made within seven days from the date of the seizure of the subject-matter in dispute.

In granting applications under this section, the High Court may impose such terms as to payment of, or giving security for, costs or otherwise as it thinks fit.

The procedure in cases transferred under this section shall conform, as far as may be, to the procedure in suits before the High Court in the exercise of its ordinary original civil jurisdiction; and orders made under this section may be executed as if they were made in the exercise of such jurisdiction; and every such order awarding or refusing compensation shall bar any suit for the recovery of compensation for any damage caused by the distress which gave rise to the case wherein such order was made.

64. In default of any order to the contrary by a Judge of the Small Cause Court or by the High Court, any two of the said bailiffs may, at the expiration of five days from a seizure of property under this chapter, appraise the property so seized, and give the debtor notice in writing to the effect of the form (marked D) in the third schedule hereto annexed.

Appraise-  
ment.

Notice of  
sale.

The bailiffs shall file in the Small Cause Court a copy of every notice given under this section.

65. In default of any such order to the contrary, the distrained property shall be sold on the day mentioned in such notice, and the said bailiffs shall, on realizing the proceeds, pay over the amount thereof to the Registrar of the Small Cause Court; and such amount shall be applied first in payment of the costs of the said distress and then in satisfaction of the debt, and the surplus, if any, shall be returned to the debtor:

Sale.

Application  
of proceeds.

Provided that the debtor may direct that the sale shall take place in any other manner, first giving security for any extra costs thereby occasioned.

66. No costs of any distress under this Chapter shall be taken or demanded except those mentioned in the part (marked E) of the third schedule hereto annexed.

Costs of  
distresses.

The Judges of the Small Cause Court may apply the sum so raised as costs towards the payment of the contingent charges and remuneration of the said bailiffs, as appears to the said Judges expedient.

67. The Registrar of the Small Cause Court shall keep a book in which all sums received as costs upon distresses made under this Chapter, and all sums paid as remuneration to the said bailiffs, and all contingent charges incurred in respect of such distresses, shall be duly entered.

Account of  
costs and  
proceeds.

He shall also enter in the said book all sums realized by sale of the property distrained and paid over to landlords under the provisions of this Chapter.

68. No distress shall be levied for arrears of rent, except under the provisions of this Chapter;

Bar of dis-  
tresses except  
under this  
Chapter  
Penalty for  
making ille-  
gal distresses.

And any person except a bailiff appointed under section 51, levying or attempting to levy any such distress, shall, on conviction before a Presidency Magistrate, be liable to be punished with fine which may extend to five hundred rupees and with imprisonment for a term which may extend to three months, in addition to any other liability he may have incurred by his proceedings

## CHAPTER IX.

## REFERENCES TO HIGH COURT.

Reference  
when  
compulsory.

69. If two or more Judges of the Small Cause Court sit together in any suit, or in any proceeding under Chapter VII of this Act, and differ in their opinion as to any question of law or usage having the force of law, or the construction of a document, which construction may affect the merits, or if in any suit or any such proceeding, in which the amount or value of the subject-matter exceeds five hundred rupees, any such question arises, and either party so requires,

the Small Cause Court shall draw up a statement of the facts of the case, and refer such statement, under section 617 of the Code of Civil Procedure,<sup>1</sup> for the opinion of the High Court, and shall either reserve judgment or give judgment contingent upon such opinion.

XIV of 1882.

Security to  
be furnished  
on such re-  
ference by  
party against  
whom con-  
tingent judg-  
ment given.

70. When judgment is given under section 69 contingent upon the opinion of the High Court, the party against whom such judgment is given shall at once furnish security, to be approved by the Small Cause Court for the costs of the reference to the High Court and for the amount of such judgment:

Provided that no security for the amount of such judgment shall be required in any case in which the Judge who tried the case has ordered such amount to be paid into Court, and the same has been paid accordingly.

If no such  
security  
given, party  
to be deemed  
to have  
submitted  
to judgment.

Unless such security as aforesaid is at once furnished, the party against whom such contingent judgment has been given shall be deemed to have submitted to the same.

## CHAPTER X.

## FEES AND COSTS.

Institution-  
fee.

71. A fee not exceeding—

(a) When the amount or value of the subject-matter does not exceed five hundred rupees—the sum of two annas in the rupee on such amount or value,

(b) when the amount or value of the subject-matter exceeds five hundred rupees—the sum of sixty-two rupees eight annas, and one anna in the rupee on the excess of such amount or value, over five hundred rupees,

shall be paid on the plaint in every suit, and every application under

<sup>1</sup> Printed, *supra*, p 262

\* \* \* \*1 section 41; and no such plaint or application shall be received until such fee has been paid.

An additional fee of ten rupees shall be paid on the filing of every agreement under section 20.

72. The fees specified in the third and fourth columns of the fourth schedule hereto annexed shall be paid previous to the issue in any suit or in any proceeding under Chapter VII of this Act of the processes, to which the said columns respectively relate, by the persons on whose behalf such processes are issued, when the amount or value of the subject-matter exceeds the sum specified in the first column, but does not exceed the sum specified in the second column of the said schedule.

Fees for processes.

73. Whenever any such suit or proceeding is settled by agreement of the parties before the hearing, half the amount of all fees paid up to that time shall be repaid by the Small Cause Court to the parties by whom the same have been respectively paid.

Repayment of half fees on settlement before hearing

74. The Small Cause Court may, whenever it thinks fit, receive and register suits instituted, and applications under section 41 made, by poor persons, and may issue processes on behalf of such persons, without payment or on a part-payment of the fees mentioned in sections 71 and 72.

Fees and costs of poor persons.

75. The Local Government may, from time to time, by notification<sup>2</sup> in the official Gazette, vary the amount of the fees payable under sections 71 and 72. :

Power to vary fees.

Provided that the amount of such fees shall in no case exceed the amount prescribed by the said sections.

76. The expense of employing an advocate, vakil, attorney or other legal practitioner incurred by any party shall not be allowed as costs in any suit or in any proceeding under Chapter VII of this Act, in the Small Cause Court, in which suit or proceeding the amount or value of the subject-matter does not exceed twenty rupees, unless the Court is of opinion that the employment of such practitioner was under the circumstances reasonable.

Expense of employing legal practitioners.

77. Nothing contained in this Chapter shall affect the provisions of sections 3, 5 and 25 of the Court Fees Act, 1870<sup>3</sup>

Sections 3, 5 and 25 of Court Fees Act, 1870,

VII of 1870.

<sup>1</sup> The words and figures "section 38 or" were repealed by the Presidency Small Cause Courts Act (1882) Amendment Act, 1896 (VII of 1896), printed, General Acts, Vol VI

<sup>2</sup> For instances of such notifications in —

Bombay see Bombay List of Local Rules and Orders, Vol I, Ed 1896, pp 422 and 423,

Madras see Madras List of Local Rules and Orders, Vol I, Ed pp 204 and 205;

<sup>3</sup> Printed, General Acts, Vol II, Ed 1898, p 124

## CHAPTER XI.

## MISCONDUCT OF INFERIOR MINISTERIAL OFFICERS.

Power to  
fine officers.

78. The Chief Judge may, by order, fine, in an amount not exceeding one month's salary, any clerk, bailiff or other inferior ministerial officer of the Court who is guilty of misconduct or neglect in the performance of the duties of his office, and such fine may be deducted from his salary.

Default of  
bailiff or  
other officer  
in execution  
of order or  
warrant.

79. If any clerk, bailiff or other inferior ministerial officer of the Small Cause Court who is employed as such in the execution of any order or warrant, loses, by neglect, connivance or omission, an opportunity of executing such order or warrant, he shall be liable, by order of the Chief Judge, on the application of the person injured by such neglect, connivance or omission, to pay such sum, not exceeding in any case the sum for which the said order or warrant was issued, as, in the opinion of the Chief Judge, represents the amount of the damage sustained by such person thereby.

Extortion or  
default of  
officers.

80. If any clerk, bailiff or other inferior ministerial officer of the Small Cause Court is charged with extortion or misconduct while acting under colour of its process, or with not duly paying or accounting for any money levied by him under its authority, the Court may inquire into such charge, and may make such order for the repayment or payment of any money so extorted, or of any money so levied as aforesaid, and of damages and costs, by such officer, as it thinks fit.

Court em-  
powered to  
summon wit-  
nesses, etc.

81. For the purposes of any inquiry under this Chapter, the Small Cause Court shall have all the powers of summoning and enforcing the attendance of witnesses and compelling the production of documents which it possesses in suits under this Act.

Enforcement  
of order.

82. Any order under this Chapter for the payment or repayment of money may, in default of payment of the amount payable thereunder, be enforced by the person to whom such amount is payable as if the same were a decree of the Small Cause Court in his favour.

## CHAPTER XII.

## CONTEMPT OF COURT.

Procedure of  
Court in cer-  
tain cases of  
contempt

83. When any such offence as is described in section 175, 178, 179, 180 or 228 of the Indian Penal Code<sup>1</sup> is committed in the view or presence of the Small Cause Court, the Court may cause the offender to be detained

XLV of 1860

<sup>1</sup> Printed, General Acts, Vol I, Ed. 1898, p. 240

in custody; and, at any time before the rising of the Court on the same day, may, if it thinks fit, take cognizance of the offence, and punish the offender with fine which may extend to two hundred rupees, and in default of payment of such fine with imprisonment in the civil jail for a term which may extend to one month unless such fine is sooner paid.

84. In every such case the Court shall record the facts constituting the offence, the statement (if any) made by the offender, and the finding and sentence

Record in such cases

XLV of 1860

If the offence is under section 228 of the Indian Penal Code,<sup>1</sup> the record must show the nature and stage of the judicial proceeding in which the Court when interrupted or insulted was sitting, and the nature of the interruption or insult offered.

85. If the Court considers that a person accused of any offence referred to in section 83 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or if the Court is for any other reason of opinion that the case should not be disposed of under section 83, the Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Presidency Magistrate, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, may forward him under custody to such Magistrate.

Procedure where Court considers that case should not be dealt with under section 83

IV of 1877

Such Magistrate shall deal with the accused person in the manner provided by the Presidency Magistrates Act, 1877,<sup>2</sup> and may sentence the offender to punishment as provided in the section of the Indian Penal Code<sup>1</sup> under which he is charged.

XLV of 1860

86. When the Court has, under section 83 or section 85, punished an offender, or forwarded him to a Presidency Magistrate for trial, for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may in its discretion discharge the offender or remit the punishment on his submission to the order or requisition of the Court, or on apology being made to its satisfaction.

Discharge of offender on submission or apology.

<sup>1</sup> Printed, General Acts, Vol I, Ed 1898, p 240

<sup>2</sup> The reference to Act IV of 1877 should now be read as the Code of Criminal Procedure, 1898 (Act V of 1898) Act IV of 1877 was repealed by Act X of 1882, which in turn has been repealed by the Code of Criminal Procedure, 1898 (Act V of 1898)

(Chapter XII.—Contempt of Court. Secs 87-88 Chapter XIII.—Miscellaneous Secs. 89-92)

Imprisonment or commitment of person refusing to answer or produce document.

87. If any witness before the Small Cause Court refuses to answer such questions as are put to him, or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, the Court may sentence him to simple imprisonment, or commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to answer such questions or to produce such document, as the case may be, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of section 83 or section 85.

Appeal from orders under sections 83 and 87.

88. Any person deeming himself aggrieved by an order under section 83 or section 87 may appeal to the High Court, and the provisions of the Presidency Magistrates Act, 1877,<sup>1</sup> relating to appeals shall, so far as may be, apply to appeals under this section. IV of 1877.

## CHAPTER XIII

### MISCELLANEOUS.

Persons by whom process may be served.

89. Notices to produce documents, summonses to witnesses, and all other processes issued in the exercise of any jurisdiction conferred on the Small Cause Court by this Act, except summonses to defendants and writs of execution, may, if the Court by general or special order so directs, be served by such persons as the Court, from time to time, appoints in this behalf.

Registers and returns.

90. The Small Cause Court shall keep such registers, books and accounts, and submit to the High Court such statements and returns, as may, subject to the approval of the Local Government, be prescribed by the High Court.

Court to furnish records, etc., called for by Local Government or High Court.

91. The Small Cause Court shall comply with such requisitions as may, from time to time, be made by the Local Government or High Court for records, returns and statements in such form and manner as such Government or Court, as the case may be, thinks fit.

Holidays and vacations.

92. The Small Cause Court shall, at the commencement of each year, draw up a list of holidays and vacations to be observed in the Court, and shall submit the same for the approval of the Local Government.

<sup>1</sup> The reference to Act IV of 1877 should now be read as the Code of Criminal Procedure, 1898. Act IV of 1877 was repealed by Act X of 1882, which was in turn repealed by the Code of Criminal Procedure, 1898 (Act V of 1898).

Such list, when it has received such approval, shall be published in the local official Gazette, and the said holidays and vacations shall be observed accordingly.

93. The Governor General and Members of his Council, the Governors of Fort St. George and Bombay, and the Members of their respective Councils, the Lieutenant-Governor of Bengal, and the Chief Justices and Judges of the High Courts established under the twenty-fourth and twenty-fifth of Victoria, chapter 104,<sup>1</sup> shall not be liable to arrest by order of the Small Cause Court.

Certain persons exempt from arrest by Court.

24 & 25 Vict,  
c 104

94. No suit shall lie on any decree of the Small Cause Court.

No suit to lie upon decree of Court.

95. Any person ordered by the Small Cause Court to be imprisoned may be imprisoned in such place as the Local Government, from time to time, appoints in this behalf.

Place of imprisonment.

96. If any person against whom any suit is brought for anything purporting to be done by him under this Act has, before the institution of the suit, tendered sufficient amends to the plaintiff, the plaintiff shall not recover.

Tender in suit for anything done under Act.

97. All prosecutions for anything purporting to be done under this Act must be commenced within three months after the offence was committed.

Limitation of prosecutions.

<sup>1</sup> The Indian High Courts Act, 1861, printed, Collection of Statutes relating to India, Vol. II, Ed 1881, p 713.

THE FIRST SCHEDULE.

[See section 2.]

ENACTMENTS REPEALED.

*A—Charters of the Supreme Courts*

Date,		Extent of repeal
26th March, 1774	Charter of the Supreme Court at Fort William.	Clause 21.
26th December, 1800	Charter of the Supreme Court at Madras.	Clause 47.
8th December, 1823	Charter of the Supreme Court at Bombay.	Clause 59

*B—Acts of the Governor General in Council.*

Number and year.	Subject or short title	Extent of repeal
IX of 1850 . . .	For the more easy recovery of small debts and demands in Calcutta, Madras and Bombay.	So much as has not been repealed.
XX of 1857 . . .	To amend Act IX of 1850 . . .	The whole.
XXVI of 1864 . . .	To extend the jurisdiction of the Courts of Small Causes at Calcutta, Madras and Bombay, and to provide for the appointment of an increased number of Judges of those Courts.	So much as has not been repealed.
I of 1875 . . .	To regulate Distresses for Rents in the Presidency-towns.	The whole.
<sup>1</sup> X of 1877 . . .	The Code of Civil Procedure . . .	Section 8, para. 2.

*C.—Act of the Governor of Bombay in Council.*

Number and year	Subject.	Extent of repeal.
VI of 1864 . . .	For the better regulation of the diet-money of persons imprisoned by the Bombay Court of Small Causes	So much as has not been repealed.

<sup>1</sup> At the time Act XV of 1882 was passed, the whole of Act X of 1877 had been repealed by the Code of Civil Procedure (Act XIV of 1882), printed, *supra*, p. 262

## THE SECOND SCHEDULE.

### PORTIONS OF CIVIL PROCEDURE CODE EXTENDING TO COURT.

[*Repealed by Act I of 1895, s. 12.*]

THE THIRD SCHEDULE.

## FORMS.

## A.

[See section 53.]

*In the Small Cause Court for*

A. B. (Plaintiff),

*versus*

C. D. (Defendant).

A. B. of \_\_\_\_\_, in the town of \_\_\_\_\_  
maketh oath [*or affirms*] and saith that C. D. \_\_\_\_\_, of \_\_\_\_\_, is justly  
indebted to \_\_\_\_\_ in the sum of Rs. \_\_\_\_\_ for arrears of  
rent of the house and premises No. \_\_\_\_\_, situated at \_\_\_\_\_, in  
the town of \_\_\_\_\_, due for \_\_\_\_\_ months, to wit from \_\_\_\_\_ to  
\_\_\_\_\_, at the rate of Rs. \_\_\_\_\_ per mensem.  
Sworn [*or affirmed*] before me the \_\_\_\_\_ day of \_\_\_\_\_  
188 .

*Judge [or Registrar].*

**B.**

[See section 54.]

*In the Small Cause Court for*

### FORM OF WARRANT.

I hereby direct you to distrain the moveable property of *C. D.*, on the house and premises situate at No \_\_\_\_\_, in the town of \_\_\_\_\_, for the sum of \_\_\_\_\_ Rs. and the costs of the distress, according to the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882. Dated \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.

(Signed and sealed.)

To E. F., Bailiff and Appraiser.

THE THIRD SCHEDULE—*continued.*

C.

[*See section 59.*]

*In the Small Cause Court for*

FORM OF INVENTORY AND NOTICE.

(*State particulars of Property seized.*)

Take notice that I have this day seized the moveable property contained in the above inventory for the sum of                      Rs., being the amount of month's rent due to *A B.* at                      last, and that unless you pay the amount thereof, together with the costs of this distress, within five days from the date hereof, or obtain an order from one of the Judges or the Registrar of the Small Cause Court to the contrary, the same will be appraised and sold pursuant to the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882. Dated the                      day of 18                      .

(Signed) *E. F.*,  
*Bailiff and Appraiser.*

To *C. D.*

D.

[*See section 64.*]

*In the Small Cause Court for*

Take notice that we have appraised the moveable property seized on the                      day of                      , under the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882, of which seizure and property a notice and inventory were duly served upon you [*or upon*                      on your behalf, *as the case may be*] under date the                      , and that the said property will be sold on the                      [*two clear days at least after the date of the notice*] at                      pursuant to the provisions of the said Act. Dated this                      day of                      18                      .

(Signed) *E. F.*,  
*G H.*,  
*Bailiffs and Appraisers.*

To *C. D.*

THE THIRD SCHEDULE—*concluded.*

E.

[*See section 66*]

*In the Small Cause Court for*

SCALE OF FEES TO BE LEVIED IN DISTRAINTS FOR HOUSE-RENT.

Sums sued for		Affidavit and warrant to distrain	Order to sell	Commission.	TOTAL.
Rs.	Rs.	Rs A P.	Rs. A. P	Rs. A. P.	Rs. A. P.
1 and under	5 .	0 4 0	0 8 0	0 8 0	1 4 0
5 „	10 .	0 8 0	0 8 0	1 0 0	2 0 0
10 „	15 .	0 8 0	0 8 0	1 8 0	2 8 0
15 „	20 .	0 8 0	1 0 0	2 0 0	3 8 0
20 „	25 .	0 12 0	1 0 0	2 8 0	4 4 0
25 „	30 .	1 0 0	1 0 0	3 0 0	5 0 0
30 „	35 .	1 0 0	1 0 0	3 8 0	5 8 0
35 „	40 .	1 0 0	1 8 0	4 0 0	6 8 0
40 „	45 .	1 4 0	2 0 0	4 8 0	7 12 0
45 „	50 .	1 8 0	2 0 0	5 0 0	8 8 0
50 „	60 .	2 0 0	2 0 0	6 0 0	10 0 0
60 „	80 .	2 8 0	2 8 0	6 8 0	11 8 0
80 to	100 .	3 0 0	3 0 0	7 0 0	13 0 0
Upwards of	100 .	3 0 0	3 0 0	7 per centum	...

The above scale includes all expenses, except in suits where the tenant disputes the landlord's claim and witnesses have to be subpœnaed, in which case each subpoena for sums under Rs. 40 must be paid for at four annas each, and twelve annas above that amount; and also, where peons are kept in charge of property distrained, four annas per day must be paid per man.

(The Fourth Schedule.—Fees for Summonses and other Processes.)

## THE FOURTH SCHEDULE.

[See section 72.]

## FEES FOR SUMMONSES AND OTHER PROCESSES.

When the amount or value of the subject-matter exceeds	But does not exceed	Fee for summons	Fee for other processes.
Rs.	Rs.	Rs. A. P.	Rs. A. P.
0	10	0 2 0	0 2 0
10	20	0 4 0	0 4 0
20	50	0 8 0	0 8 0
50	100	1 0 0	1 0 0
100	200	1 4 0	2 0 0
200	300	1 8 0	3 0 0
300	400	1 12 0	4 0 0
400	500	2 0 0	5 0 0
500	600	2 4 0	6 0 0
600	700	2 8 0	7 0 0
700	800	2 12 0	8 0 0
800	900	3 0 0	9 0 0
900	1,000	3 4 0	10 0 0
1,000	1,100	3 6 0	10 8 0
1,100	1,200	3 8 0	11 0 0
1,200	1,300	3 10 0	11 8 0
1,300	1,400	3 12 0	12 0 0
1,400	1,500	3 14 0	12 8 0
1,500	1,600	4 0 0	13 0 0
1,600	1,700	4 2 0	13 8 0
1,700	1,800	4 4 0	14 0 0
1,800	1,900	4 6 0	14 8 0
1,900	2,000	4 8 0	15 0 0

## THE PUNJAB UNIVERSITY ACT, 1882.

## CONTENTS.

## PREAMBLE.

## SECTIONS.

1. Short title and commencement.
2. Establishment and incorporation of University.
3. Property of Punjab University College to vest in University.
4. Chancellor.
5. Vice-Chancellor.
6. Fellows.
7. First Fellows.
8. Cancellation and vacation of appointment of Fellow.
9. Constitution and powers of Senate.
10. Chairman at meetings of Senate.
11. Proceedings at meetings of Senate.
12. Appointment of Syndicate, Faculties, examiners and officers.
13. Functions of Syndicate.
14. Power to confer degrees, etc, after examination.
15. Power to confer degrees on persons who have passed examinations at the Punjab University College in 1882.
16. Power to confer honorary degrees.
17. Power to levy fees
18. Power to make statutes, rules and regulations.
19. Duty of Local Government to enforce Act, statutes, rules and regulations.
20. Notifications in certain cases.
21. Annual accounts.
22. [*Repealed* ]

## THE SCHEDULE.

PART I.—OFFICES TO BE DEEMED TO HAVE BEEN SPECIFIED UNDER SECTION 6, CLAUSE (a).

PART II.—PERSONS TO BE DEEMED TO HAVE BEEN APPOINTED FELLOWS UNDER SECTION 6, CLAUSE (b) OR (c).

ACT No XIX OF 1882.<sup>1</sup>

[5th October, 1882.]

## An Act to establish and incorporate the University of the Punjab.

enamble.

WHEREAS an Institution, styled at first the Lahore University College, but subsequently the Punjab University College, was established at Lahore in the year 1869, with the special objects of promoting the diffusion of European science, as far as possible, through the medium of the vernacular languages of the Punjab, improving and extending vernacular literature generally, affording encouragement to the enlightened study of the Eastern classical languages and literature, and associating the learned and influential classes of the Province with the officers of Government in the promotion and supervision of popular education ;

But it was at the same time provided that every encouragement should be afforded to the study of the English language and literature, and that, in all subjects which could not be completely taught in the vernacular, the English language should be regarded as the medium of examination and instruction ;

And whereas this Institution was, by a Notification, No. 472, dated 8th December, 1869, published in the *Punjab Government Gazette* of the twenty-third day of December, 1869, declared to be so established, in part fulfilment of the wishes of a large number of the Chiefs, Nobles and influential classes of the Punjab, and it is now expedient, the said Institution having been attended with success, further to fulfil the wishes of the said Chiefs, Nobles and influential classes, by constituting the said Institution a University for the purpose of ascertaining, by means of examination or otherwise, the persons who have acquired proficiency in different branches of Literature, Science and Art, and for the purpose of conferring upon them academic degrees, diplomas, Oriental literary titles, licenses and marks of honour ;

And whereas it is also expedient that the University so constituted should be incorporated, and that the property, moveable and immoveable, which has been hitherto held by, or in trust for, the said Institution should become the property of the University, subject to all existing trusts as to the manner in which, and the purposes to which, that property or any part thereof is to be applied ;

<sup>1</sup> For Statement of Objects and Reasons, see *Gazette of India*, 1882, Pt V, p 869, for Proceedings in Council, see *ibid*, Supplement, pp 853, 903 and 1325

It is hereby enacted as follows:—

1. This Act may be called the Punjab University Act, 1882; and it shall come into force at once.

2. (1) A University shall be established at Lahore; and the Governor General for the time being shall be the Patron of the University.

(2) The University shall consist of a Chancellor, a Vice-Chancellor and such number of Fellows as may be determined in manner hereinafter provided.

(3) The University shall be a Body Corporate by the name of the University of the Punjab, having perpetual succession and a common seal, with power to acquire and hold property, moveable or immoveable, to transfer the same, to contract, and to do all other things necessary for the purposes of its constitution.

(4)<sup>1</sup> The University shall come into existence on such day as the Local Government may, by notification in the official Gazette, appoint in this behalf.

3. All the property, moveable and immoveable, held at the date at which the University comes into existence by or in trust for the Punjab University College, shall, on that date, become the property of the University, to be administered by it for the purposes of the University, subject to all existing trusts as to the manner in which, and the purposes to which, that property or any part thereof is to be applied.

4. The Lieutenant-Governor of the Punjab for the time being shall be the Chancellor of the University; and the first Chancellor shall be the Hon'ble Sir Charles Umpherston Aitchison, Knight Commander of the Most Exalted Order of the Star of India, Companion of the Order of the Indian Empire, Doctor of Laws.

5. (1) The Vice-Chancellor shall be such one of the Fellows as the Chancellor may, from time to time, appoint in this behalf.

(2) Except as provided in sub-section (4), he shall hold office for two years from the date of his appointment, and on the expiration of his term of office may be re-appointed.

(3) But, if a Vice-Chancellor leaves India without the intention of returning thereto, he shall thereupon cease to be Vice-Chancellor.

(4) James Broadwood Lyall, Esquire, of the Bengal Civil Service, and at present Financial Commissioner of the Punjab, shall be deemed to have

Short title  
and com-  
mencement  
Establish-  
ment and  
incorporation  
of Univer-  
sity

Property of  
Punjab  
University  
College to  
vest in Uni-  
versity.

Chancellor.

Vice-Chan-  
cellor.

<sup>1</sup> The University came into existence on the 14th October, 1882, see Notification No. 333-S, Punjab Gazette, 1882, Pt I, p 485.

been appointed the first Vice-Chancellor; and his term of office shall, subject to the provisions of sub-section (3), expire on the last day of December, 1884.

Fellows.

6. The following persons shall be Fellows, namely:—

- (a) every person who has held the office of Chancellor, and all persons for the time being holding such offices under Government as the Local Government may, from time to time, by notification in the official Gazette, specify in this behalf;
- (b) persons whom the Chancellor may, from time to time, appoint by name as being eminent benefactors of the Punjab University, original promoters of the movement in favour of the establishment of the Punjab University College, or persons distinguished for attainments in Literature, Science or Art, or for zeal in the cause of education;
- (c) such persons (if any) as may, from time to time, be elected by the Senate of the University, and approved by the Chancellor; and
- (d) the representatives, for the time being with the Government of the Punjab, of such Chiefs (if any) of territories not comprised in British India as the Local Government may, from time to time, by notification in the official Gazette, specify in this behalf:

Provided that—

- (1) the whole number of the Fellows holding office under clauses (a), (b) and (c), exclusive of the Vice-Chancellor, shall never be less than fifty; and
- (2) the number of persons for the time being elected under clause (c) shall never exceed the number for the time being appointed under clause (b).

*Explanation.*—The succession to an office notified under clause (a), of a person elected under clause (c) or appointed under clause (b), does not affect his position for the purposes of the second clause of this proviso.

First Fellows.

7. (1) The offices specified in Part I of the schedule hereto annexed shall be deemed to have been specified in a notification issued under section 6, clause (a); and

(2) the persons named in Part II of that schedule shall, except for the purposes of the second clause of the proviso to section 6, be deemed to have been appointed Fellows under clause (b) or (c) of section 6.

Cancellation and vacation of appointment of Fellow.

8. (1) The Chancellor may, with the consent of not less than two-thirds of the members of the Senate for the time being in India, cancel the appointment of any Fellow appointed under section 6, clause (b) or clause (c); and the Local Government may, whenever it thinks fit, by notification

in the official Gazette, cancel or amend any notification issued under section 6, clause (a) or clause (d).

(2) If any Fellow appointed under section 6, clause (b) or clause (c), and not being a person named in Part II of the schedule to this Act, leaves India without the intention of returning thereto, or is absent from India for more than four years, he shall thereupon cease to be a Fellow.

9. (1) The Chancellor, Vice-Chancellor and Fellows for the time being shall form the Senate of the University. Constitution and powers of Senate.

(2) The Senate shall have the entire management of, and superintendence over, the affairs, concerns and property of the University, and shall provide for that management, and exercise that superintendence, in accordance with the statutes, rules and regulations for the time being in force under this Act.

10. At every meeting of the Senate the Chancellor, or, in his absence, the Vice-Chancellor, or, in the absence of both, a Fellow chosen by a majority of the Fellows present at the meeting, shall preside as Chairman. Chairman at meetings of Senate

11. Every question which comes before the Senate at a meeting shall be decided by a majority of the votes of the members present and of such members for the time being in India as may have sent proxies in accordance with the rules for the time being in force under this Act; and the Chairman at any such meeting shall have a vote, and, in case of an equality of votes, a second or casting vote. Proceedings at meetings of Senate

Provided that no question shall be decided at any such meeting unless fourteen members at the least, besides the Chairman, are present at the time of the decision.

12. Subject to the statutes, rules and regulations for the time being in force under this Act, the Senate may, from time to time,— Appointment of Syndicate, Faculties, Examiners and Officers

(1) constitute an Oriental Faculty and Faculties of Arts, Law, Science, Medicine and Engineering;

(2) appoint, or provide for the appointment of, a Syndicate;

(3) appoint, suspend and remove a Registrar;

(4) appoint, suspend and remove, or provide for the appointment, suspension and removal of,—

(a) Examiners, officers and servants of the University, and

(b) Professors and Lecturers in connection with the University.

The first Registrar shall be Gottlieb William Leitner, Esquire, Master of Arts, Doctor of Laws, Barrister-at-law.

13. The Syndicate shall be the executive Committee of the Senate, and may discharge such functions of the Senate as it may be empowered to dis- Functions of Syndicate.

charge by the statutes, rules and regulations for the time being in force under this Act.

Power to confer degrees, etc., after examination.

14. Subject to the statutes, rules and regulations for the time being in force under this Act, the Senate may confer on all persons who have passed such examinations in the University and fulfilled such other conditions as may be prescribed under this Act—

- (a) in the Oriental Faculty, the degrees of Bachelor, Master and Doctor of Oriental Learning;
  - (b) in the Faculty of Arts, the degrees of Bachelor and Master of Arts and Doctor of Literature:
- and, if empowered by the Governor General in Council in this behalf,—
- (c) in the Faculty of Law, the degrees of Bachelor and Doctor of Laws;
  - (d) in the Faculty of Science, the degrees of Bachelor and Doctor of Science;
  - (e) in the Faculty of Medicine, the degrees of Bachelor and Doctor of Medicine;
  - (f) in the Faculty of Engineering, the degrees of Bachelor and Master of Civil Engineering.

The Senate may also confer—

- (g) such diplomas, Oriental literary titles and licenses as may be prescribed by any rules for the time being in force under this Act; and
- (h) such marks of honour for a high degree of proficiency in the different branches of Literature, Science and Art as may be prescribed by those Rules.

Power to confer degrees on persons who have passed examinations at the Punjab University College in 1882

15. Notwithstanding anything in section 14, the Senate may confer degrees, diplomas, Oriental literary titles, licenses or marks of honour, as provided by that section, on any persons who have in the year 1882, before the passing of this Act, passed such examinations prescribed by the Punjab University College as may be sufficient to satisfy the Senate that they are persons qualified in point of learning to obtain those degrees, diplomas, Oriental literary titles, licenses or marks of honour.

Power to confer honorary degrees

16. Notwithstanding anything hereinbefore contained, but subject to the confirmation of the Chancellor, the Senate may, in the Oriental Faculty and the Faculties of Arts and Law, grant the degree of Doctor to any person without requiring him to undergo any examination for that degree:

Provided that—

- (1) a resolution has been passed at a meeting of the Senate that the person is, by reason of eminent position and attainments, a fit and proper person to receive that degree; and
- (2) in the case of degrees in the Faculty of Law, the Senate has been empowered by the Governor General in Council to grant such degrees after examination

17. The Senate may charge such reasonable fees for entrance into the University and continuance therein, for admission to the examinations of the University, for attendance at any lectures or classes in connection with the University, and for the degrees to be conferred by the University, as may be imposed by the rules or regulations for the time being in force under this Act. Power to levy fees.

18. (1) The Senate shall, as soon as may be after the passing of this Act, and may from time to time thereafter, make statutes, rules and regulations consistent with this Act touching— Power to make statutes, rules and regulations

- (a) the mode and time of convening the meetings of the Senate and of transacting business thereat;
  - (b) the appointment, suspension, removal, duties and remuneration of the Registrar, Examiners, Professors, Lecturers, officers and servants;
  - (c) the appointment, constitution and duties of the Syndicate and the Faculties;
  - (d) the previous course of instruction to be followed by candidates for the examinations of the University;
  - (e) the examinations to be passed and the other conditions to be fulfilled by candidates for degrees;
  - (f) the examinations to be passed and the other conditions to be fulfilled by candidates for diplomas, Oriental literary titles, licenses and marks of honour, respectively;
  - (g) the conduct of examinations for degrees, diplomas, Oriental literary titles, licenses and marks of honour, and,
  - (h) generally, all matters regarding the University.
- (2) All such statutes, rules and regulations shall be reduced into writing, and sealed with the common seal of the University, and shall—
- (a) in the case of statutes, and of rules and regulations made under clause (e) of this section, after they have been confirmed by the Local Government and sanctioned by the Governor General in Council, and

(Secs. 19-21.)

(b) in the case of all other rules and regulations, after they have been sanctioned by the Local Government,

be binding on all persons, members of the University, or admitted thereto, and on all candidates for degrees, diplomas, Oriental literary titles, licenses and marks of honour.

(3) If, on the expiration of eighteen months from the date on which the University comes into existence, no statutes, rules or regulations have been made and sanctioned, or (as the case may be) made, confirmed and sanctioned, under the foregoing provisions of this section, touching a matter mentioned in sub-section (), the Local Government may, by notification in the official Gazette, make such statutes, rules or regulations touching that matter as it thinks fit; and, subject in the case of statutes and of rules and regulations touching the matters mentioned in clause (e) to the sanction of the Governor General in Council, those statutes, rules or regulations shall be deemed to have been made and sanctioned, or (as the case may be) made, confirmed and sanctioned, under sub-sections (1) and (2).

Duty of Local Government to enforce Act, statutes, rules and regulations.

19. It shall be duty of the Local Government to require that the proceedings of the University shall be in conformity with this Act and with the statutes, rules and regulations for the time being in force under the same; and the Local Government may exercise all powers necessary for giving effect to its requisitions in this behalf, and may (among other things) annul, by a notification in the official Gazette, any such proceeding which is not in conformity with this Act and the said statutes, rules and regulations.

Notifications in certain cases.

20. All appointments made under section 5, all appointments made or cancelled under section 6, clauses (b) and (e), and section 8, all degrees, diplomas, Oriental literary titles or licenses conferred under sections 14, 15 and 16, and all statutes, rules and regulations made under section 18, shall be notified in the official Gazette; wherein, also, the record of the proceedings of every meeting of the Senate shall be duly published

Annual accounts.

21. The accounts of the income and expenditure of the University shall be submitted once in every year to the Local Government for such examination and audit as the Local Government may direct

22. [*Temporary provision as to statutes, rules and regulations.*] *Rep by the Repealing and Amending Act, 1891 (XII of 1891).*

*(The Schedule.)*

## THE SCHEDULE.

*(See section 7.)*

## PART I.

Offices to be deemed to have been specified under section 6, clause (a) :—

The office of—

Judge of the Chief Court, Punjab ;  
 Financial Commissioner of the Punjab ;  
 Surgeon-General of the Punjab ;  
 Commissioner of Lahore ;  
 Commissioner of Delhi ;  
 Commissioner of Amritsar ;  
 Accountant-General of the Punjab ;  
 Director of Public Instruction, Punjab ;  
 Principal of the Lahore Government College ;  
 Principal of the Lahore Medical School ;  
 Inspector of Schools in the Punjab ;  
 Deputy Commissioner of Lahore ;  
 Deputy Commissioner of Delhi ;  
 Deputy Commissioner of Amritsar.

## PART II.

Persons to be deemed to have been appointed Fellows under section 6, clause (b) or (c) :—

His Highness Mahārājā Ranbīr Singh, of Jammú and Kashmír, G.C.S.I.,  
 C.I.E., Counsellor of the Empress of India ;  
 His Highness Mahārājā Rajindar Singh, of Patiala ;  
 His Highness Nawáb Sadík Muhammad Khán, of Baháwalpur, G.C.S.I. ;  
 His Highness Rájā Raghbīr Singh, of Jhínd, G.C.S.I., C.I.E., Counsellor of  
 the Empress of India ;  
 His Highness Rájā Híra Singh, of Nabhá, G.C.S.I. ;  
 His Highness Rájā Jagatjít Singh, of Kapúrthhala ;  
 Rájā Bije Sen, of Mandi ;  
 Nawáb Ibrahim Alí Khán, of Maler Kotla ;  
 Rájā Bikram Singh, of Farídkot ;  
 Nawáb Abdul Majid Khán ;  
 Sardár Ajít Singh, Atarwála ;  
 Rai Amín Chand, Sardár Bahádur ;  
 Malaz-ul-Ulma Sardár Atar Singh, C.I.E., of Bhadaur ;  
 Major-General Henry Prevost Babbage, Bengal Staff Corps, late Deputy  
 Commissioner, Punjab ;

David Graham Barkley, Esquire, M A., Bengal Civil Service, Barrister-at-law ;  
 Deputy Surgeon-General Henry Walter Bellew, C S I ;  
 Reverend Edward Bickersteth, M A. ;  
 Charles Boulnois, Esquire, Barrister-at-law, late Judge, Chief Court, Punjab ;  
 Sardár Bikráma Singh, C S I, Ahluwália ;  
 Arthur Brandreth, Esquire, Barrister-at-law, late of the Bengal Civil Service, and Judge, Chief Court, Punjab ;  
 Surgeon-Major Thomas Edwin Burton Brown, M.D ;  
 John Scarlett Campbell, Esquire, late of the Bengal Civil Service, and Judge, Chief Court, Punjab ;  
 Surgeon-Major William Center, M D, M.A. ;  
 Reverend Robert Clark, M A. ;  
 John Graham Cordery, Esquire, M A, Bengal Civil Service ;  
 The Hon'ble Henry Stuart Cunningham, A.M, Barrister-at-law, Judge of the High Court, Calcutta ;  
 Surgeon-Major Alexander Morrison Dallas ;  
 Mansel Longworth Dames, Esquire, Bengal Civil Service ,  
 Sir Robert Henry Davies, K C S I, C I E, late Lieutenant-Governor of the Punjab and its Dependencies ;  
 Colonel William George Davies, C S I :  
 Deputy Surgeon-General Annesley Charles Castriot DeRenzy, B A ;  
 Sir Robert Eyles Egerton, K C S I, C I E, Counsellor of the Empress, late Lieutenant-Governor of the Punjab and its Dependencies ;  
 Dennis Fitzpatrick, Esquire, B A., Bengal Civil Service, Barrister-at-law ;  
 Reverend C. W. Foreman, D D ;  
 The Right Reverend Thomas Valpy French, D D., Lord Bishop of Lahore ;  
 Munshi Ghulám Nabí ;  
 Surgeon-Major Robert Gray, M B. ;  
 Major Leopold John Henry Gray, C S I, Bengal Staff Corps ;  
 Sir Lepel Henry Griffin, K C S I, Bengal Civil Service ;  
 Pandit Guru Parshád ;  
 Sayyad Hádi Husan Khán ;  
 Rájá Harbans Singh ;  
 Kaur Harnám Singh, Ahluwália ;  
 Doctor Thomas Hastings, late Deputy Inspector-General of Hospitals ;  
 Edward Percy Henderson, Esquire, Bengal Civil Service, Barrister-at-law ;

Surgeon-Major George Henderson, M.D. ;  
 Mír Hidayat Alí, Khán Bahádur ;  
 Lieutenant-Colonel William Rice Morland Holroyd ;  
 Reverend W. Hooper, M.A. ;  
 Reverend T. P. Hughes, B.D. ;  
 Munshi Hukm Chand ;  
 Sodhi Hukm Singh ;  
 Denzil Charles Jelf Ibbetson, Esquire, B.A., Bengal Civil Service ;  
 Rájá Jahándád Khán, Khán Bahádur, Ghakkar ;  
 Aghá Kalbabíd ;  
 Fakír Sayyad Kamr-ud-dín ;  
 Rai Bahádur Kanhya Lál, C.E. ;  
 Khán Bahádur Khán Muhammad Sháh ;  
 Bába Khem Singh, C.I.E., Bedi ;  
 John Lockwood Kipling, Esquire ;  
 Surgeon Edward Lawrie, M.D. ;  
 Gottlieb William Leitner, Esquire, M.A., LL.D. ;  
 Thomas Crampton Lewis, Esquire, M.A. ;  
 Charles Robert Lindsay, Esquire, late of the Bengal Civil Service, and  
     Judge, Chief Court, Punjab ;  
 James Broadwood Lyall, Esquire, Bengal Civil Service ;  
 General Robert Maclagan, R.E., late Secretary to Government, Punjab,  
     Public Works Department ;  
 Colonel Charles Alexander McMahon ;  
 The Ven'ble Henry James Matthew, M.A., Archdeacon of Lahore ;  
 Colonel Julius George Medley, R.E. ;  
 Philip Sandys Melvill, Esquire, C.S.I., late of the Bengal Civil Service,  
     and Governor General's Agent, Baroda ;  
 John Andrew Erasmus Miller, Esquire ;  
 Pandit Motí Lál, Káthju ;  
 Khán Bahádur Muhammad Barkat Alí Khán ;  
 Khalífa Sayyad Muhammad Hussain ;  
 Muhammad Hyat Khán, C.S.I. ;  
 Rai Múl Singh ;  
 Nasir Alí Khán, Kazilbásh ;  
 Bábu Navina Chandrá Rai ;  
 Nawáb Nawázish Alí Khán ;  
 Major Edward Newbery ;

Edward O'Brien, Esquire, Bengal Civil Service ;  
 Henry Edmund Perkins, Esquire, Bengal Civil Service ;  
 Henry Meredith Plowden, Esquire, B.A., Barrister-at-law ;  
 Major-General Charles Pollard, R.E. ;  
 Baden Henry Baden-Powell, Esquire, Bengal Civil Service ;  
 Edward Augustus Prinsep, Esquire, late of the Bengal Civil Service,  
 and Settlement Commissioner, Punjab ;  
 Honorary Surgeon Rahím Khán, Khán Bahádur ;  
 Diwán Rám Náth ;  
 William Henry Rattigan, Esquire, M.A., PH.D., Barrister-at-law ;  
 Pandit Rikhi Kesh ;  
 Rájá Sir Sáhíb Dyal, K.C.S.I. ;  
 Rai Bahádur Sáhíb Singh ;  
 Leslie Seymour Saunders, Esquire, Bengal Civil Service ;  
 Brigade-Surgeon John Barclay Scriven, late Civil Surgeon, Lahore ;  
 David Simson, Esquire, late of the Bengal Civil Service, and Judge,  
 Chief Court, Punjab ;  
 John Sime, Esquire, B.A. ;  
 Surgeon-General Charles Manners Smith, late of the Indian Medical  
 Service ;  
 John Watt Smyth, Esquire, Bengal Civil Service, Barrister-at-law ;  
 Charles Henry Spitta, Esquire, LL.B., Barrister-at-law ;  
 Thomas Henry Thornton, Esquire D.C.L., C.S.I., late of the Bengal Civil  
 Service, and Judge, Chief Court, Punjab ;  
 Thomas William Hooper Tolbort, Esquire, Bengal Civil Service, Bar-  
 rister-at-law ;  
 Charles Lewis Tupper, Esquire, B.A., Bengal Civil Service ;  
 Major Isaac Peatt Westmoreland, R.E. ;  
 Lieutenant-Colonel George Gordon Young ;  
 William Mackworth Young, Esquire, M.A., Bengal Civil Service ;  
 Maulvi Zia-ud-dín Khán.

## THE INDIAN PAPER CURRENCY ACT, 1882.

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CONTENTS.

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## PREAMBLE.

*I.—Preliminary.*

## SECTIONS

1. Short title  
Local extent.  
Commencement.
2. Act No. III of 1871 repealed.

*II.—The Department of Paper Currency.*

3. Department of Paper Currency.
4. Head Commissioner.  
Commissioners for Madras, Bombay and Rangoon.
5. Power to establish Circles of Issue, etc.
6. Deputy Commissioners and Currency Agents.
7. Subordination of Commissioners, etc.
8. Appointment, suspension and removal of officers.

*III.—Supply and Issue of Currency Notes.*

9. Head Commissioner to provide and distribute currency notes.
10. Signatures to notes.
11. Issue of notes for silver by Head Commissioner, Commissioners and Deputy Commissioners.
12. Issue of notes for silver by Currency Agents.
13. Issue of notes for gold.
14. } *Repealed.*
15. }

*IV.—Notes where legal tender and where payable.*

16. Notes where legal tender.
17. Notes where payable.
18. Notes issued from Currency Agencies to be deemed to be issued from place of issue of circle.

*V.—Reserve.*

19. Coin and bullion received for notes to be kept as a reserve, except amount fixed as herein provided.
20. Investment of such amount.
21. Appropriation of coin, bullion and securities.
22. Trustees of securities purchased under Act.
23. Power to sell and replace securities.
24. Accounts of interest on securities.

*VI—Private Bills payable to Bearer on Demand.*

- 25 Prohibition of issue of private bills or notes payable to bearer on demand.
- 26. Penalty for issuing such bills or notes.  
Prosecutions.

*VII.—Miscellaneous.*

- 27. Monthly abstracts of accounts
- 28. Supplementary powers of the Government of India.

ACT No XX OF 1882<sup>1</sup>

[26th October, 1882.]

An Act to amend the law relating to the Government Paper  
Currency.

Preamble. WHEREAS it is expedient to amend the law relating to the Government Paper Currency; It is hereby enacted as follows:—

*I—Preliminary.*

- |                                   |  |
|-----------------------------------|--|
| Short title                       | 1 This Act may be called the Indian Paper Currency Act, 1882 :   |
| Local extent.                     | It extends to the whole of British India, <sup>2</sup>   |
| Commence-<br>ment                 | and it shall come into force on the passing thereof.   |
| Act No III<br>of 1871<br>repealed | 2. (1) Act No. III of 1871 ( <i>to consolidate and amend the law relating to the Government Paper Currency</i> ) is hereby repealed.   |
|                                   | (2) All appointments made, rules prescribed, notifications published, authorities conferred, securities purchased and notes issued under the said Act, or any Act thereby repealed, shall, if in force, undisposed of or in circulation when this Act comes into force be deemed to be respectively made, prescribed, published, conferred, purchased and issued under this Act And all references made to any portion of the Indian Paper Currency Act, 1871, or any Act thereby repealed, in Acts or Regulations passed before |

III of 1871.

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1881, Pt V, p 964; for Report of the Select Committee, see *ibid*, 1882, Pt V, p 721, for Proceedings relating to the Bill, see *ibid*, 1881, Supplement, p 451, *ibid*, 1882, Supplement, pp 134, 312, and 1493, Extra Supplement, 1882, p 37

<sup>2</sup> Act XX of 1882 has been declared in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation (III of 1872), s 3, as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886), printed, Bengal Code, Vol I, Ed 1889, p 597, in Upper Burma generally (except the Shan States) by the Upper Burma Laws Act, 1886 (XX of 1886), s 6, see now the Burma Laws Act, 1898 (XIII of 1898) by which Act XX of 1886 has been repealed; and in British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890), s 3, printed, Baluchistan Code, Ed 1890, p 69.

(II—*The Department of Paper Currency. Secs 3-5*)

this Act comes into force, shall be deemed to be made to the corresponding portion of this Act <sup>1</sup>

II—*The Department of Paper Currency*

3. (1) There shall continue to be a Department of the public service, whose function shall be the issue of promissory notes of the Government of India, payable to bearer on demand, for such sums, not being less than five rupees, as the Governor General in Council, from time to time, directs <sup>2</sup>

Department  
of Paper  
Currency.

(2) Such notes shall be called currency notes

(3) The Department shall be called the Department of Paper Currency

4. At the head of the Department there shall be an officer called the Head Commissioner of Paper Currency, and there shall be three other officers, called, respectively, the Commissioner of Paper Currency for Madras, the Commissioner of Paper Currency for Bombay, and the Commissioner of Paper Currency for Rangoon

Head Com-  
missioner

Commis-  
sioners for  
Madras,  
Bombay and  
Rangoon

5. The Governor General in Council may, from time to time, by order notified in the Gazette of India, <sup>3</sup>—

Power to  
establish Cir-  
cles of Issue,  
etc

(a) establish districts, to be called Circles of Issue, four of which circles shall include the towns of Calcutta, Madras, Bombay and Rangoon, respectively,

(b) appoint in each circle some one town to be the place of issue of currency notes, as hereinafter provided,

(c) establish in each such town an office or offices of issue,

(d) establish in any town situate in any circle an office, to be called a Currency Agency, and

(e) declare that, for the purposes of this Act, any town (other than Calcutta, Madras, Bombay or any town situate in \* \* 4 Burma in which an office of issue is established, shall be deemed to be situate within such Presidency as is specified in the order.

<sup>1</sup> For notification declaring that Nagpur shall be held to be in the Bombay Presidency for the purposes of the Act, see Notification No. 1120, Gazette of India, June 29, 1867, p. 19. This notification is issued under s. 12 of Act III of 1871, and is kept in force by this section.

<sup>2</sup> For notification prescribing the sums for which notes shall be issued, see Gazette of India, 1874, Pt. I, p. 4.

<sup>3</sup> For notifications establishing circles of issue in —

Madras . . . . . see Madras List of Local Rules and Orders, Ed. 1898, Vol. I, p. 205,

Burma . . . . . see Burma Laws List, Ed. 1897, p. 168.

<sup>4</sup> The word "British" was repealed by the Burma Laws Act, 1898 (XIII of 1898), see the Fifth Schedule.

(II.—*The Department of Paper Currency. Secs. 6-8. III.—Supply and Issue of Currency Notes. Secs. 9-10*)

Deputy Com-  
missioners  
and Currency  
Agents.

6. For each Circle of Issue, other than those which include the towns of Calcutta, Madras, Bombay and Rangoon, there shall be an officer called the Deputy Commissioner of Paper Currency, and for each Currency Agency an officer called the Currency Agent.

Subordin-  
ation of Com-  
missioners,  
etc

7. For the purposes of this Act,—

- (a) the Commissioners of Paper Currency for Madras, Bombay and Rangoon, and the Deputy Commissioners of Paper Currency in the Presidency of Fort William in Bengal, shall be subordinate to the Head Commissioner of Paper Currency, and
- (b) the Deputy Commissioners of Paper Currency in the Presidencies of Fort St George and Bombay, and in the Province of Burma, shall be subordinate to the Commissioners of Paper Currency for Madras, Bombay and Rangoon, respectively,
- (c) the Currency Agent at any town shall be subordinate to the Head Commissioner, Commissioner or Deputy Commissioner, as the case may be, of Paper Currency for the Circle of Issue in which that town is situate.

Appoint-  
ment, sus-  
pension and  
removal of  
officers

8. All officers under this Act shall be appointed, and may be suspended or removed, by the Governor General in Council.

*III.—Supply and Issue of Currency Notes.*

Head Com-  
missioner to  
provide and  
distribute  
currency  
notes

9. (1) The Head Commissioner shall provide currency notes of the denominations prescribed under this Act, and shall supply the Commissioners and the Currency Agents subordinate to him, and the Deputy Commissioners, with such notes as they need for the purposes of this Act.

(2) The Commissioners and Deputy Commissioners shall supply the Currency Agents subordinate to them, respectively, with such notes as those Agents need for the purposes of this Act.

(3) Every such note shall bear upon it the name of the town from which it is issued.

Signatures to  
notes

10. (1) The name of the Head Commissioner, of one of the Commissioners, of a Deputy Commissioner or of some other person authorized by the Head Commissioner, or by one of the Commissioners, to sign currency notes, shall be subscribed to every such note, and may be impressed thereon by machinery.

(2) Names so impressed shall be taken to be valid signatures.

<sup>1</sup> See the fourth note on preceding page

(III.—Supply and Issue of Currency Notes. Secs. 11-13. IV.—Notes where legal tender and where payable. Sec. 16.)

11. The Head Commissioner, the Commissioners and the Deputy Commissioners shall, in their respective Circles of Issue, on the demand of any person, issue, from the office or offices of issue established in their respective circles, currency notes of the denominations prescribed under this Act, in exchange for the amount thereof—

Issue of notes for silver by Head Commissioner, Commissioners and Deputy Commissioners.

(a) in current silver coin of the Government of India,

(b) [*Rep by the Indian Coinage and Paper Currency Act, 1893 (VIII of 1893).*]

(c) in current silver coin made under the Native Coinage Act, 1876,<sup>1</sup> as to which coin a declaration has been made under section 3 of that Act; or

(d) [*Rep by the Indian Coinage and Paper Currency Act, 1893 (VIII of 1893)*]

\* \* \* \* \*

IX of 1876.

12. Any Currency Agent to whom notes have been supplied under section 9 may, if he thinks fit, on the demand of any person, issue from his agency any such notes in exchange for the amount thereof in any coin specified in clause (a)<sup>3</sup> \* \* \* or clause (c) of section 11.

Issue of notes for silver by Currency Agents

13. The Governor General in Council may, from time to time, by order notified in the Gazette of India, direct that currency notes \* \* \*<sup>4</sup> shall be issued at such offices of issue as are named in the order, in exchange for gold coin of full weight of the Government of India, or for foreign gold coin or gold bullion, at the rates, and according to the rules and conditions, fixed by that order<sup>5</sup>

Issue of notes for gold.

14. [*Melting and assaying bullion or coin received for notes*] *Rep. by the Indian Coinage and Paper Currency Act, 1893 (VIII of 1893)*]

15. [*Certificates for bullion or coin*] *Rep. by the Indian Coinage and Paper Currency Act, 1893 (VIII of 1893).*

IV.—Notes where legal tender and where payable.

16. Within any of the said Circles of Issue, a currency note issued

Notes where legal tender.

<sup>1</sup> Printed, General Acts, Vol II, Ed 1898, p 508

<sup>2</sup> The proviso was repealed by the Indian Coinage and Paper Currency Act, 1893 (VIII of 1893), printed, General Acts, Vol VI.

<sup>3</sup> The words "clause (b)" were repealed by Act VIII of 1893

<sup>4</sup> The words "to an extent to be specified in the order not exceeding one-fourth of the total amount of issues represented by coin and bullion as provided by this Act" were repealed by Act VIII of 1893

<sup>5</sup> For notification as to the terms on which currency notes shall be issued in exchange for gold or bullion, see second footnote on p 640 *infra*

For s 13 (a), as to issue of notes against gold received in England, inserted by the Indian Paper Currency Act, 1898 (II of 1898), s 2, see that Act This section will expire on the 21st day of July, 1900 See Act VIII of 1898

(IV—Notes where legal tender and where payable. Secs. 17-18. V.—Reserve. Secs. 19-21)

from any town in that circle shall be a legal tender for the amount expressed in that note, in payment or on account of—

- (a) any revenue or other claim, to the amount of five rupees and upwards, due to the Government of India, and
- (b) any sum of five rupees and upwards, due by the Government of India, or by any body corporate or person in British India.

Provided that no such note shall be deemed to be a legal tender by the Government of India at any office of issue.

Notes where payable

17. A currency note shall be payable only—

- (a) at the office or offices of issue of the town from which it has been issued, and
- (b) in the case of notes issued from any town not situate in \* \* 1  
Burma, also at the Presidency-town of the Presidency within which that town is situate

Notes issued from Currency Agencies to be deemed to be issued from place of issue of circle

18. For the purposes of sections 16 and 17, notes issued from any Currency Agency shall be deemed to have been issued from the town appointed under section 5 to be the place of issue in the Circle of Issue in which that Agency is established

#### V—Reserve.

Coin and bullion received for notes to be kept as a reserve, except amount fixed as here-in provided

19.<sup>2</sup> The whole amount of the coin and bullion received under this Act, and under Act III of 1871,<sup>3</sup> for currency notes, shall be retained and secured as a reserve to pay those notes, with the exception of such an amount, not exceeding <sup>4</sup>[one hundred millions] of rupees, as the Governor General in Council, with the consent of the Secretary of State for India, from time to time fixes

Investment of such amount

20.<sup>2</sup> The amount so fixed shall be published in the Gazette of India, and the whole, or such part thereof as the Governor General in Council from time to time fixes, shall be invested in securities of the Government of India

Appropriation of coin, bullion and securities.

21. (I) The said coin, bullion and securities shall be appropriated and set apart to provide for the satisfaction and discharge of the said notes,

<sup>1</sup> The word "British" was repealed by the Burma Laws Act, 1898 (XIII of 1898), see the Fifth Schedule to the Act

<sup>2</sup> For notification under these sections, fixing 100 millions of rupees as the amount which need not be retained as a reserve, see Gazette of India, 1896, Pt I, p 984.

<sup>3</sup> Act III of 1871 was repealed by this Act, see s 2, *supra*

<sup>4</sup> "One hundred millions" was substituted for "eighty millions" by the Indian Paper Currency Act Amendment Act, 1896 (XXI of 1896). The words "eighty millions" were substituted for the original words "sixty millions" by Act XV of 1890, which was repealed by Act XXI of 1896, General Acts, Vol VI

(V—*Reserve. Secs. 22-24. VI.—Private Bills payable to Bearer on Demand. Sec. 25*)

and the said notes shall be deemed to have been issued on the security of the said coin, bullion and securities, as well as on the general credit of the Government of India :

<sup>1</sup> [Provided that any coin or bullion so received and appropriated may be sold or exchanged for gold or silver coin of the Government of India of the like value, which shall be so appropriated and set apart instead of the coin or bullion sold or exchanged ]

(2) [*Rep. by the Indian Coinage and Paper Currency Act, 1893 (VIII of 1893)* ]

22. The securities purchased under section 20 shall be held by the Head Commissioner and the Master of the Mint at Calcutta, in trust for the Secretary of State for India in Council.

Trustees of securities purchased under Act

23. (1) The Head Commissioner may, at any time when ordered so to do by the Governor General in Council, sell and dispose of any portion of the above-mentioned investment.

Power to sell and replace securities

(2) For the purpose of effecting such sales, the Master of the Mint at Calcutta shall, on a request in writing from the Head Commissioner, at all times sign and endorse the securities, and the Head Commissioner, if so directed by the Governor General in Council, may purchase securities of the Government of India to replace such sales

24. (1) The interest accruing due on the securities purchased and held under this Act shall be entered in a separate account to be annually rendered by the Head Commissioner to the Governor General in Council

Accounts of interest on securities

(2) The amount of the interest shall, from time to time, as it becomes due, be paid to the credit of the Government of India, under the head of "Profits of Notes Circulation"

(3) An account, showing the amount of the profits and of the charges and expenses incidental thereto, shall be made up and published annually in the Gazette of India.

#### VI.—*Private Bills payable to Bearer on Demand.*

25. No body corporate or person in British India shall draw, accept, make or issue any bill of exchange, hundí, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills, hundís or notes payable to bearer on demand, of any such body corporate or of any such person :

Prohibition of issue of private bills or notes payable to bearer on demand.

<sup>1</sup> This proviso was substituted for the original proviso by the Indian Coinage and Paper Currency Act, 1893 (VIII of 1893), printed, General Acts, Vol VI

(VI.—*Private Bills payable to Bearer on Demand.* Sec. 26 VII.—*Miscellaneous.* Secs. 27-28.)

Provided that cheques or drafts, payable to bearer on demand or otherwise, may be drawn on bankers, shroffs or agents, by their customers or constituents, in respect of deposits of money in the hands of those bankers, shroffs or agents and held by them at the credit and disposal of the persons drawing such cheques or drafts.

Penalty for  
issuing such  
bills or notes

26. (1) Any body corporate or person committing any offence under section 25 shall, on conviction before a Presidency Magistrate, or a Magistrate of the first class, be punished with a fine equal to the amount of the bill, hundi, note or engagement in respect whereof the offence is committed.

Prosecutions

(2) Every prosecution under this section shall be instituted by the Head Commissioner, Commissioner or Deputy Commissioner, as the case may be, of Paper Currency for the Circle of Issue in which the bill, hundi, note or engagement is drawn, accepted, made or issued

#### VII.—*Miscellaneous*

Monthly  
abstracts of  
accounts.

27. An abstract of the accounts of the Department of Paper Currency, showing—

- (a) the whole amount of currency notes in circulation,
- (b) the amount of coin and bullion reserved, distinguishing gold from silver, and
- (c) the nominal value of, and the price paid for, the Government securities held by the said Department,

shall be made up monthly by the Head Commissioner, and published, as soon as may be, in the Gazette of India

Supplemen-  
tary powers  
of the Gov-  
ernment of  
India

28. (1) The Governor General in Council may, from time to time, by notification in the Gazette of India,

- (a) fix the amounts (not being less than five rupees) for which currency notes shall be issued :
- (b) alter the limits of any of the Circles of Issue :
- (c) declare the places at which currency notes shall be issued .<sup>1</sup>
- (d) fix the rates, rules and conditions at and according to which gold may be taken in exchange for currency notes <sup>2</sup>
- (e) fix the charge for melting and assaying bullion and foreign coin received for such notes :

<sup>1</sup> For notification under this section declaring the offices from which currency notes shall issue, see Gazette of India, 1894, Pt I, p 4

<sup>2</sup> For notification under this section fixing the value of currency notes in exchange for gold coin or gold bullion, see Gazette of India, 1893, Pt I, p 803

(f) [*Rep. by the Indian Coinage and Paper Currency Act, 1893 (VIII of 1893)*] <sup>1</sup>

(g) <sup>2</sup> regulate any matters relative to paper currency which are not provided for by this Act: and

(h) revoke or alter any notification previously published under this Act.

(2) Every notification under this section shall come into force on the day therein in that behalf mentioned, and shall have effect as if it were enacted in this Act

(3) [*Rep. by the Indian Coinage and Paper Currency Act, 1893 (VIII of 1893)*] <sup>1</sup>

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ACT No II of 1883.<sup>3</sup>

[*26th January, 1883.*]

**An Act to amend the Elephants Preservation Act, 1879.**

VI of 1879.

WHEREAS it is expedient to amend the Elephants Preservation Act, 1879, in manner hereinafter appearing; It is hereby enacted as follows:—

For section 4 of the said Act the following shall be substituted, namely:—

“4 Every wild elephant captured, and the tusks of every wild elephant killed, by any person not licensed under this Act, shall be the property of Government.”

Rights of -  
Government  
with respect  
to certain  
elephants and  
tusks.

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<sup>1</sup> Printed, General Acts, Vol VI.

<sup>2</sup> (1) For rules for the payment of lost or mutilated currency notes, *see* Gazette of India, 1866, p 1010

(2) For notification establishing agencies of the Paper Currency Department, *see* Gazette of India, 1871, Pt. I, p 34

(3) For notification authorizing the acceptance of notes in payment of Government dues irrespective of the circle of issue, *see* Gazette of India, 1872, Pt I, p 298

(4) For rules made under the provisions of this and the Indian Coinage Act, 1870 (XXIII of 1870), as to silver bullion or coin delivered into the mint, *see* Gazette of India, 1878, Pt I, p 269

(5) For notification as to the maintenance of a reserve of coin at each circle of issue, *see* Gazette of India, 1881, Pt I, p 22

These rules and notifications are kept in force by s 2 (2) of this Act

<sup>3</sup> For Statement of Objects and Reasons, *see* Gazette of India, 1882, Pt V, p 241; for Proceedings in Council, *see* *ibid*, 1882, Supplement, p 1333; *ibid*, 1883, Supplement, p 116.

## THE INDIAN MERCHANT SHIPPING ACT, 1883.

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CONTENTS.

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## CHAPTER I.

## PRELIMINARY.

## SECTIONS.

1. Short title.  
Extent.  
Commencement.
2. Repeal of enactments.
3. Definitions
4. Saving and provision as to powers for removal of master.

---

CHAPTER II.

## INVESTIGATIONS INTO SHIPPING CASUALTIES.

5. Chapter not to apply to certain ships
6. Report of casualties to be made to Local Government.
7. Power for Local Government to appoint special Court of Investigation.
8. Power for other Courts to hold investigations into casualties when so directed
9. Power for Court of Investigation to inquire into charges against masters, mates and engineers
10. Power for Local Government to direct investigation into charges of incompetency or misconduct.
11. Person accused to be heard
12. Powers of Courts as to evidence and regulation of proceedings.
13. Assessors.
14. Power to arrest witnesses and cause entry and detention of vessels.
15. Power to commit for trial and bind over witnesses.
16. Depositions.
17. Report by Court to Local Government.

---

CHAPTER III.

## SUSPENSION AND CANCELLATION OF CERTIFICATES AND GRANT OF FRESH CERTIFICATES.

18. Saving of power to cancel and suspend certificates under English Acts.
19. Power to issue local certificates in lieu of cancelled or suspended certificates.

## SECTIONS.

20. Power for Local Government to suspend or cancel certificates in certain cases.
  21. Obligation to deliver up cancelled or suspended certificate.
  22. Report to other Local Governments
  23. Report to Board of Trade
  24. Power to revoke cancellation or suspension and grant new certificate.
  - 24 A. Power to Court to suspend or cancel certificates granted by Local Government.
- 

## CHAPTER IV.

## AGREEMENTS WITH SEAMEN.

25. Chapter to be read with Act I of 1859.
  26. Masters to enter into agreements with seamen.
  27. Form and contents of agreement
  28. Scale of provisions to be furnished to lascars.
  29. Stipulation where lascars are shipped.
  30. Forms for British or Colonial ships
- 

## CHAPTER V.

## HEALTH-OFFICERS.

- 31 [*Repealed.*]
- 

## CHAPTER VI.

## MISCELLANEOUS

32. Power to appoint persons to sue
  33. Proceedings to be instituted in name of Secretary of State for India in Council.
  34. Amendment of section 10 of Act I of 1859
  35. Addition to section 11 of Act I of 1859.
  36. Amendment of section 79 of Act I of 1859.
  37. Provisions as to examinations, etc., of masters not to apply to certain ships
  38. Amendment of Act X of 1841, sections 2, 15, 17 and 23.
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ACT No V OF 1883<sup>1</sup>

[23rd February, 1883.]

An Act for the further amendment of the law relating to  
Merchant Shipping.

WHEREAS it is expedient to amend the law relating to investigations into casualties affecting ships and charges against masters, mates and engineers;

and whereas it is also expedient to provide, in other respects hereinafter appearing, for the regulation and control of Merchant Shipping;

It is hereby enacted as follows:—

## CHAPTER I.

## PRELIMINARY

## Short title.

1. (1) This Act may be called the Indian Merchant Shipping Act, 1883.

## Extent.

(2) It extends to the whole of British India;

Commencement.  
Repeal of enactments.

(3) and it shall come into force on the first day of January, 1884.

2. (1) The Indian Merchant Shipping Act, 1875, and Act XIII of IV of 1875. 1878 (*an Act to provide for the recovery in British India of wages due to, and expenses incurred in respect of, certain seamen and apprentices, and to amend the Indian Merchant Shipping Act, 1875, and the Indian Ports Act, 1875*), are hereby repealed.

(2) But all \* \*<sup>2</sup> officers appointed, powers conferred, investigations held, certificates cancelled or suspended, agreements made and persons authorized under the said Acts or either of them, shall be deemed to have been respectively \* \*<sup>3</sup> appointed, conferred, held, cancelled or suspended, made and authorized under this Act.

## Definitions.

3. In this Act—

<sup>4</sup> “ship” includes every description of vessel used in navigation not propelled by oars; and

<sup>1</sup> For the Statement of Objects and Reasons, see Gazette of India, 1881, Pt V, p 170; for Report of the Select Committee, see *ibid*, 1882, Pt V, p 665; for further Report of the Select Committee, see *ibid*, 1883, Supplement, p 257; for Proceedings in Council, see *ibid*, 1881, Supplement, pp 221 and 279, *ibid*, 1883, Supplement, pp 257 and 263

<sup>2</sup> The words “proceedings commenced” were repealed by the Repealing and Amending Act, 1891 (XII of 1891), s 2 (1) and Schedule, printed, General Acts, Vol VI

<sup>3</sup> The word “commenced” was repealed by the Repealing and Amending Act, 1891 (XII of 1891), s 2 (1) and Schedule

<sup>4</sup> Cf definition in s 3 (51) of the General Clauses Act, 1897 (X of 1897), printed, General Acts, Vol VI.

(Chapter I.—Preliminary. Sec 4. Chapter II.—Investigations into Casualties. Secs. 5-6)

1 “master” means any person (except a pilot or harbour-master) having for the time being control or charge of a ship.

17 & 18  
Vict, c 104

4 (1) Nothing in this Act shall affect the powers conferred by section 240 of the Merchant Shipping Act, 1854,<sup>2</sup> or by section 80 of Act I of 1859 (for the amendment of the law relating to Merchant Shipping), on Courts having admiralty<sup>3</sup> jurisdiction in India.

Saving and provision as to powers for removal of master.

(2) The powers conferred by the last-mentioned enactment may, at any port in British India where there is no Court having admiralty jurisdiction, be exercised by the principal Court of ordinary criminal jurisdiction at that port

## CHAPTER II.

### INVESTIGATIONS INTO SHIPPING CASUALTIES.

5. Nothing in this Chapter shall apply to any ship belonging to, or in the service of, Her Majesty or of the Government of India, or belonging to any foreign Prince or State.

Chapter not to apply to certain ships.

6. (1) Whenever any Magistrate, or any officer appointed by the Local Government in this behalf,<sup>4</sup> receives credible information that—

Report of casualties to be made to Local Government.

- (a) any ship has been lost, abandoned, stranded or materially damaged on or near the coasts of British India; or
- (b) by reason of any casualty happening to, or on board of, any ship on or near those coasts, loss of life has ensued; or
- (c) any ship has caused loss or material damage to any other ship on or near those coasts; or
- (d) any such loss, abandonment, stranding, damage or casualty has happened elsewhere to, or on board of, any British ship, and any competent witnesses thereof have arrived or are to be found at any place in British India; or
- (e) any British ship is supposed to have been lost, and any evidence can be obtained in British India as to the circumstances under which she proceeded to sea or was last heard of;

<sup>1</sup> Cf definition in s 3 (32) of the General Clauses Act, 1897 (X of 1897)

<sup>2</sup> See now s 472 of the Merchant Shipping Act, 1894 (57 & 58 Vict, c 60), by which this Act has been repealed

<sup>3</sup> As to Courts having Admiralty Jurisdiction in India, see the Colonial Courts of Admiralty (India) Act, 1891 (XVI of 1891) Printed, General Acts, Vol VI

<sup>4</sup> For notifications making such appointments under this section in—

Bombay	. . .	see Bombay List of Local Rules and Orders, Vol I, Ed. 1896, p cxiii;
Madras	. .	see Madras List of Local Rules and Orders, Vol I, Ed 1898, p 205;
Burma	. .	see Burma Gazette, 1897, Pt I, p 57

*(Chapter II.—Investigations into Shipping Casualties. Sec. 6)*

he shall forthwith report in writing the information to the Local Government

(2) In the cases mentioned in clauses (a), (b) and (c), the master, pilot, harbour-master, or other person in charge of the ship, or (where two ships are concerned) in charge of each ship, at the time of the loss, abandonment, stranding, damage or casualty, and

in cases under clause (d), where the master of the ship concerned, or (except in the case of a loss) where the ship concerned, proceeds to any place in British India from the place where the loss, abandonment, stranding, damage or casualty has occurred, the master of the ship,

shall, on arriving in British India, give immediate notice of the loss, abandonment, stranding, damage or casualty to the nearest Magistrate, or, when he arrives at a port in British India, to the officer appointed as aforesaid at that port.

(3) Any person bound to give notice under this section and wilfully failing to give the same shall be punished with fine which may extend to five hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to three months.

(4)<sup>1</sup> The Magistrate or other officer whose duty it is under sub-section (1) to report to the Local Government such information as is referred to in that sub-section shall be deemed to be a public servant, and shall have all the powers which an inspector appointed under section 14 of the Merchant Shipping Act, 1854,<sup>2</sup> has under clauses (1) to (5) of section 15 of that Act, that is to say —

17 & 18  
Vict., c 104.

(i) he may go on board any ship, and may inspect the same or any part thereof, or any of the machinery, boats, equipments or articles on board thereof, to which the provisions of this Act apply, not unnecessarily detaining or delaying her from proceeding on any voyage;

(ii) he may enter and inspect any premises the entry or inspection of which appears to him to be requisite for the purpose of the report which he is directed to make;

(iii) he may, by summons under his hand, require the attendance of all such persons as he thinks fit to call before him and examine for such purpose, and may require answers or returns to any inquiries he thinks fit to make;

<sup>1</sup> Sub-sec (4) was added by the Merchant Shipping Law Amendment Act, 1891 (VI of 1891), s 9, printed, General Acts, Vol VI

<sup>2</sup> See now s 728 of the Merchant Shipping Act, 1894 (57 & 58 Vict., c 60), by which this Act has been repealed

*(Chapter II.—Investigations into Shipping Casualties. Secs 7-8)*

- (iv) he may require and enforce the production of all books, papers or documents which he considers important for such purpose,
- (v) he may administer oaths, or may, in lieu of requiring or administering an oath, require any person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination.

(5)<sup>1</sup> The word 'coasts' in this section includes the coasts of creeks and tidal rivers.

7. <sup>2</sup>[(1) If the Local Government to which the report prescribed by the last foregoing section has been made or within whose territories any competent witnesses of any such loss, abandonment, stranding, damage or casualty as is described in clause (a), (b), (c) or (d) of sub-section (1) of the same section have arrived or are to be found or any evidence of such supposed loss as is described in clause (e) of the same sub-section can be obtained, is of opinion that a formal investigation into the facts mentioned in any of the said clauses is requisite or expedient, such Local Government may appoint a special Court, consisting of not less than two nor more than four persons, and direct that Court to make the investigation, and may fix the place for making the same]

Power for Local Government to appoint Special Court of Investigation.

(2) One of the members of the Court shall be a Magistrate acting in or near the place where the investigation is made; another shall be some person conversant with maritime affairs; and the other or others (if any) shall be conversant with either maritime or mercantile affairs.

8. Every Court having admiralty jurisdiction, in British India, and the principal Court of ordinary criminal jurisdiction, at every port of British India where there is no Court having admiralty jurisdiction, is hereby authorized, when so directed by the Local Government<sup>3</sup> [or by such officer as the Local Government has empowered in this behalf], to make the<sup>4</sup> investigations referred to in section seven.

Power for other Courts to hold investigations into casualties when so directed.

<sup>1</sup> Sub-sec (5) was added by the Merchant Shipping Law Amendment Act, 1891 (VI of 1891), s 9, printed, General Acts, Vol VI

<sup>2</sup> Sub-sec (1) of this section was substituted for the original, by the Merchant Shipping Law Amendment Act, 1891 (VI of 1891), s 10

The original sub-section ran as follows —

"If in any such case a formal investigation into the facts mentioned in section 6, clause (a), (b), (c), (d) or (e), appears to the Local Government to be requisite or expedient, the Local Government (whether the notice is given or not) may appoint a special Court, consisting of not less than two nor more than four persons, and direct that Court to make the investigation, and may fix the place for making the same"

<sup>3</sup> These words were inserted by the Indian Merchant Shipping Law Amendment Act, 1891 (VI of 1891), s 11, printed, General Acts, Vol VI

<sup>4</sup> For notification authorizing the Political Resident, Aden, to direct the Principal Court at Aden to make investigations into shipping casualties, see Bombay List of Local Rules and Orders, Ed 1896, Vol I, p cxiii

## (Chapter II.—Investigations into Shipping Casualties. Secs. 9-12.)

Power for Court of Investigation to inquire into charges against masters, mates and engineers.

9. (1) Any Court making an investigation under section 7 or section 8 may inquire into any charge of incompetency or misconduct arising, in the course of the investigation, against any master, mate or engineer, as well as into any charge of a wrongful act or default on his part causing any such loss, abandonment, stranding, damage or casualty as aforesaid.

(2) In every case in which any such charge, whether of incompetency or misconduct, or of a wrongful act or default, as aforesaid, arises against any master, mate or engineer in the course of an investigation, the Court shall, before the commencement of the inquiry, cause to be furnished to him a copy of the report or statement of the case upon which the investigation has been directed.

Power for Local Government to direct investigation into charges of incompetency or misconduct

10. (1) If the Local Government has reason to believe that there are grounds for charging any master, mate or engineer, holding a certificate granted by the Board of Trade or a Local Government, with incompetency or misconduct, otherwise than in the course of an investigation under section 7 or section 8, it may transmit a statement of the case to any Court mentioned in section 8, at or nearest to the place at which it may be convenient for the parties and witnesses to attend, and may direct that Court to make an investigation into that charge.

(2) Before commencing the investigation, the Court shall cause the master, mate or engineer so charged to be furnished with a copy of the statement transmitted by the Local Government.

Person accused to be heard

11. For the purpose of an investigation under this Chapter into any charge against a master, mate or engineer, the Court may summon him to appear, and shall give him full opportunity of making a defence either in person or otherwise.

Powers of Courts as to evidence and regulation of proceedings

12. For the purpose of any investigation under this Chapter, the Court making the investigation, so far as relates to compelling the attendance and examination of witnesses and the production of documents and the regulation of the proceedings, shall have—

- (a) if the Court is a special Court—the same powers as are exercisable by the principal Court of ordinary criminal jurisdiction for the place at which the investigation is made;
- (b) if the Court is a Court having admiralty jurisdiction or a principal Court of ordinary criminal jurisdiction—the same powers as are exercisable by that Court in the exercise of its admiralty or criminal jurisdiction (as the case may be).

*(Chapter II—Investigations into Shipping Casualties. Secs 13-15.)*

13. (1) When any investigation involves, or appears likely to involve, any question as to the cancelling or suspension of the certificate of a master, mate or engineer, the Court making the investigation shall constitute as its assessors for the purpose of the investigation two persons having experience in the Merchant service; and in every other investigation the Court making it may, if it thinks fit, constitute as its assessor for the purposes of the investigation any person conversant with maritime affairs and willing to act as its assessor Assessors.

(2) The assessors shall attend during the investigation and deliver their opinions in writing, to be recorded on the proceedings. But the exercise of all powers conferred on the Court by this Act or any other enactment for the time being in force shall rest with the Court.

14. (1) If any Court making an investigation under this Chapter thinks it necessary for obtaining evidence that any person should be arrested, it may issue a warrant for his arrest, and may, for the purpose of effecting the arrest, authorize any officer (subject, nevertheless, to any general or special instructions from the Local Government) to enter any vessel

Power to arrest witnesses and cause entry and detention of vessels.

(2) Any officer so authorized may, for the purpose of enforcing the entry, call to his aid any officers of Police or Customs, or any other persons, and may seize and detain the vessel for such time as is reasonably necessary to effect the arrest, and every such officer or other person shall be deemed to be a public servant within the meaning of the Indian Penal Code, section 186.<sup>1</sup>

XLV of 1860

(3) No person shall be detained by virtue of this section for more than forty-eight hours

15. (1) Whenever, in the course of any such investigation, it appears that any person has committed within the jurisdiction of any Court in British India an offence punishable under any law in force in British India, the Court making the investigation may (subject to such rules consistent with this Act as the High Court may from time to time prescribe) cause him to be arrested, or commit him or hold him to bail to take his trial before the proper Court, and may bind over any person to give evidence at the trial, and may, for the purposes of this section, exercise all the powers of a Magistrate of the first class or of a Presidency Magistrate.

Power to commit for trial and bind over witnesses.

(2) For the purposes of this section the Recorder of Rangoon shall,

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<sup>1</sup>Printed, General Acts, Vol I, Ed 1898, p 240

(Chapter II.—*Investigations into Shipping Casualties. Secs. 16-17. Chapter III—Suspension and Cancellation of Certificates and Grant of fresh Certificates. Sec. 18*)

within the local limits of his ordinary civil jurisdiction, be deemed to be the High Court.

Depositions.

16. (1) Whenever, in the course of any such trial, the testimony of any witness is required in relation to the subject-matter, any deposition previously made by him in relation to the same subject-matter before any Court making an investigation under this Chapter shall, if authenticated by the signature of the Magistrate or presiding Judge, be admissible in evidence on proof—

(a) that the witness cannot be found within the jurisdiction of the Court before which the trial is held; and

(b) that it was made in the presence of the person accused and that he had an opportunity of cross-examining the witness.

(2) A certificate by the Magistrate or presiding Judge that the deposition was made in the presence of the accused and that he had that opportunity shall, unless the contrary be proved, be sufficient evidence that it was so made and that he had that opportunity.

Report by Court to Local Government.

17. (1) The Court shall, in the case of all investigations under this Chapter, transmit to the Local Government a full report of the conclusions at which it has arrived, together with the evidence.

(2) In cases in which, under the Merchant Shipping Acts, 1854 to 1882,<sup>1</sup> the Court is required to send a report to the Board of Trade, the report shall be sent through the Local Government, and the transmission of the report to the Local Government shall be a sufficient compliance with this section.

### CHAPTER III.

#### SUSPENSION AND CANCELLATION OF CERTIFICATES AND GRANT OF FRESH CERTIFICATES

Saving of power to cancel and suspend certificates under English Acts

18. Nothing in this Act shall affect the powers conferred by the Merchant Shipping Acts, 1854 to 1882,<sup>1</sup> on the Courts conducting investigations under sections 7, 8, 9 and 10 of this Act, to cancel or suspend certificates granted under any of the said Merchant Shipping Acts, or certificates to which the provisions of any such Act have been made applicable under the Merchant Shipping (Colonial) Act, 1869.<sup>1</sup>

32 & 33  
Vict., c. 11.

<sup>1</sup> See now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), by which these Acts have since been repealed

(Chapter III—*Suspension and Cancellation of Certificates and Grant of fresh Certificates. Secs 19-20.*)

19. (1) When any such Court cancels or suspends any such certificate, the Local Government may, if it thinks fit, and if it is so empowered by any enactment of a British Indian legislature for the time being in force, grant under that enactment, but without examination, to the holder of the certificate, when the certificate is a certificate as master, a certificate as mate, and, when the certificate is a certificate as mate or engineer, a certificate as mate or engineer, as the case may be, of a grade lower than that which he held at the time of the cancellation or suspension.

Power to  
certificates  
issue local  
in lieu of  
cancelled or  
suspended  
certificates.

(2) A certificate so granted shall have the same effect as if it had been granted after examination, but shall not have the effect of a certificate granted under the provisions of the Merchant Shipping (Colonial) Act, 1869,<sup>1</sup> or of any Order in Council under that Act.

32 & 33  
Vict , c.11.

(3) The Local Government may act under this section either in pursuance of a recommendation from the Court, or of its own motion.

20. Any certificate (whether of competency or service) which has been granted by any Local Government to any master, mate or engineer, but has not been granted under the provisions of the Merchant Shipping (Colonial) Act, 1869,<sup>1</sup> or of any Order in Council under the said Act, may be suspended or cancelled, by that or any other Local Government, in the following cases, that is to say:—

32 & 33  
Vict , c 11.

Power for  
Local Gov-  
ernment to  
suspend or  
cancel certi-  
ficates in  
certain cases.

2 \* \* \* \* \*

(b) if, on any investigation made under the Merchant Shipping Acts, 1854 to 1882<sup>1</sup> or on any investigation made by any Court or tribunal for the time being authorized by the legislative authority in any British possession to make inquiry into charges of incompetency or misconduct on the part of masters, mates or engineers of ships, or as to shipwrecks or other casualties affecting ships, the Court or tribunal reports that the master, mate or engineer is incompetent, or has been guilty of any gross act of misconduct, drunkenness or tyranny, or that the loss, stranding or abandonment of, or damage to, any ship, or loss of life, has been caused by his wrongful act or default;

(c) if he is proved to have been convicted of any offence which, if

<sup>1</sup> See now the Merchant Shipping Act, 1894 (57 & 58 Vict , c 60), by which these Acts have since been repealed

<sup>2</sup> Cl (a) to s 20 was repealed by the Indian Merchant Shipping Law Amendment Act, 1891 (VI of 1891), s 12, printed, General Acts, Vol VI

(Chapter III.—Suspension and Cancellation of Certificates and Grant of fresh Certificates. Secs 21-24)

committed in British India, would be non-bailable, or, if committed in England, would be a felony; and

- (d) if (in case of a master) he has been superseded by the order of any Admiralty Court, or of any Naval Court constituted as provided by the Merchant Shipping Act, 1854,<sup>1</sup> or by any other law for the time being in force.

17 & 18  
Vict, c 104

\* \* \* \* \*

Obligation  
to deliver up  
cancelled or  
suspended  
certificate

21. Every master, mate or engineer whose certificate is cancelled or suspended under section 20 shall deliver it to the Shipping Master or to such other person as the Local Government which cancelled or suspended the certificate, directs, and in default of such delivery shall, for each offence, be punished with fine which may extend to five hundred rupees

Report to  
other Local  
Govern-  
ments

22. If the Local Government which cancels or suspends, under section 20, a certificate of a master, mate or engineer is not the Local Government that granted the same, the Local Government so cancelling or suspending the certificate shall report the proceedings, and the fact of cancellation or suspension, to the Local Government which granted the certificate

Report to  
Board of  
Trade

23. Every Local Government cancelling or suspending under section 20 the certificate of a master, mate or engineer shall, as soon as may be practicable, report to the Board of Trade the fact of such cancellation or suspension.

Power to  
revoke can-  
cancellation or  
suspension  
and grant  
new certi-  
ficate

24. (1) Any Local Government may at any time revoke any order of cancellation or suspension which it may have made under section 20, or grant, without examination, to any person, whose certificate it has so cancelled, a new certificate of the same or of any lower grade.

(2) A certificate so granted shall have the same effect as if it had been granted after examination, but shall not have the effect of a certificate granted under the provisions of the Merchant Shipping (Colonial) Act, 1869,<sup>1</sup> or of any Order in Council under the said Act

32 & 33  
Vict, c 11

(3) A certificate of competency for a Home-trade-ship under Act I of 1859,<sup>2</sup> shall be deemed, for the purposes of this section, to be of a lower

<sup>1</sup> See now the Merchant Shipping Act, 1894 (57 & 58 Vict, c 60), by which this Act has been repealed

<sup>2</sup> The proviso to s 20 was repealed by the Indian Merchant Shipping Law Amendment Act, 1891 (VI of 1891), s 12, printed, General Acts, Vol VI.

<sup>3</sup> The Indian Merchant Shipping Act, 1859, printed, General Acts, Ed 1898, Vol I, p. 167

(Chapter III—*Suspension and Cancellation of Certificates and Grant of fresh Certificates* Sec. 24A.)

grade than a certificate of competency for a foreign-going ship under the same Act

24A.<sup>1</sup> (1) Notwithstanding anything in the foregoing provisions of this Act, a certificate (whether of competency or service) which has been granted by any Local Government to a master, mate or engineer, but has not been granted under the provisions of the Merchant Shipping (Colonial) Act, 1869,<sup>2</sup> or of any Order in Council under the said Act, may, if a Court conducting an investigation under this Act finds that the loss, stranding or abandonment of or damage to any ship, or loss of life, has been caused by the wrongful act or default of the master, mate or engineer, or that he is incompetent or has been guilty of any gross act of drunkenness, tyranny or other misconduct, be cancelled or suspended by the Court.

Power to Court to suspend or cancel certificates granted by Local Government

32 & 33 Vict ,  
c 11

Provided that the Court shall not cancel or suspend a certificate unless the holder of the certificate was furnished before the commencement of the investigation with the copy of the report or statement required by section 9 or section 10, as the case may be.

(2) At the conclusion of the investigation, or as soon afterwards as possible, the Court shall state in open sitting the decision to which it may have come with respect to the cancelment or suspension of any certificate.

(3) A master, mate or engineer whose certificate has been cancelled or suspended by the Court shall deliver the certificate to the Court, and the Court shall forward it to the Local Government, together with the report which it is required by section 17, sub-section (1), to transmit to that Government.

(4) A master, mate or engineer failing to deliver a certificate as required by sub-section (3) shall be punished with fine which may extend to five hundred rupees.

(5) The duties imposed and powers conferred by sections 22, 23 and 24 on the Local Government which cancels or suspends a certificate shall, when a Court has under this section cancelled or suspended a certificate, be performed and exercised by the Local Government to which the Court has forwarded the certificate under sub-section (3), as if such Local Government had itself cancelled or suspended the certificate under section 20

<sup>1</sup> S 24A was added by the Merchant Shipping Law Amendment Act, 1891 (VI of 1891), s 13, printed, General Acts, Vol VI

<sup>2</sup> See now the Merchant Shipping Act, 1894 (57 & 58 Vict , c 60), by which this Act has been repealed

## CHAPTER IV.

## AGREEMENTS WITH SEAMEN

Chapter to  
be read with  
Act I of  
1859  
Masters to  
enter into  
agreements  
with seamen

25. This Chapter shall be read with, and taken as part of, Act I of 1859<sup>1</sup>

26. The master of every ship, except ships of a burden not exceeding three hundred tons employed only in the Home-trade, shall enter into an agreement with every seaman whom he engages in, and carries to sea from, any port in British India as one of his crew, in the manner hereinafter mentioned

Form and  
contents of  
agreement

27. (1) Every such agreement shall be in a form sanctioned by the Governor General in Council, and shall be dated at the time of the first signature thereof, and shall be signed by the master before any seaman signs the same, and shall contain the following particulars as terms thereof, that is to say:—

- <sup>2</sup> (a) either the nature and, as far as practicable, the duration of the intended voyage or engagement, or the maximum period of the voyage or engagement, and the places or parts of the world, if any, to which the voyage or engagement is not to extend;
- (b) the number and description of the crew, specifying how many are engaged as sailors;
- (c) the time at which each seaman is to be on board or to begin work;
- (d) the capacity in which each seaman is to serve,
- (e) the amount of wages which each seaman is to receive;
- (f) a scale of the provisions which are to be furnished to each seaman; and
- (g) any regulations as to conduct on board, and as to fines, short allowance of provisions or other lawful punishments for misconduct, which have been sanctioned by the Governor General in Council as regulations proper to be adopted, and which the parties agree to adopt.

(2) Every such agreement shall be so framed as to admit of stipulations to be adopted at the will of the master and seaman in each case (not being inconsistent with the provisions of any enactment for the time being in force relating to Merchant Shipping), as to advance of wages and

<sup>1</sup> The Indian Merchant Shipping Act, 1859, printed, General Acts, Ed 1898, Vol I, p 167.

<sup>2</sup> For notification under this section, modifying the first clause in the form of agreement signed by Indian seamen for foreign voyages, see Gazette of India, 1896, Pt I, p 146

supply of warm clothing, and may contain any other stipulations which are not contrary to law.

28. (1) In the case of such agreements with lascars or other Native seamen, the scale of the provisions agreed to be furnished to each of such seamen shall not be less than a scale to be, from time to time, fixed and published by the Local Government with the previous sanction of the Governor General in Council<sup>1</sup>

Scale of provisions to be furnished to lascars

(2) Any master entering into an agreement with any lascar or other Native seaman for a scale of provisions less than the scale so fixed and published shall be punished with fine which may extend to two hundred rupees

29. (1) Whenever it is agreed that the service of any lascar or other Native seaman shall end at any port not in British India, the agreement shall, in addition to the particulars specified in section 27, contain a stipulation that fit employment shall be provided for him on board some other ship bound to the port at which he was shipped, or such other port in British India as may be agreed on; or

Stipulation where lascars are shipped

that a passage shall be provided for him to some port in British India free of charge, or on such other terms as may be agreed on

(2) Every such stipulation shall be signed by the owner of the ship, or by the master on his behalf

(3) In this section the word "seaman" shall include also any Native of British India carried to sea from any port in British India as one of the crew of a ship.

30. If the master of any ship belonging to the United Kingdom or any British possession has an agreement with his crew, made in due form according to the law of the place to which the ship belongs, or in which her crew were engaged, and engages a single seaman, not being a lascar or other Native seaman, in any port in British India, the seaman may sign the agreement so made, and it shall not be necessary for him to sign an agreement under this Act

Forms for British or Colonial ships.

<sup>1</sup> For notifications fixing such scale in the case of—

(1) Bombay . . . . .	see Bombay List of Local Rules and Orders, Ed 1896, Vol I, pp cxiii & cxiv,
(2) Burma . . . . .	see Burma Laws List, Ed 1897, p 170;
(3) Madras . . . . .	see Madras List of Local Rules and Orders, Ed 1898, Vol I, p 206

## CHAPTER V.

## HEALTH-OFFICERS

31. [*Addition to Act XII of 1875.*—*Rep by the Indian Ports Act, 1889 (X of 1889),<sup>1</sup> s 2 and Sch. III.*

## CHAPTER VI.

## MISCELLANEOUS.

Power to  
appoint per-  
sons to sue

32. (1) Where any wages or expenses recoverable under section 213<sup>2</sup> of the Merchant Shipping Act, 1854, or under section 16 of the Merchant Shipping Act Amendment Act, 1855, are under the same sections, a charge upon any ship, or recoverable from any master, owner or other person, within the jurisdiction of any Court in British India, the Governor General in Council may, from time to time, by notification in the Gazette of India, authorize,<sup>3</sup> either generally or specially, such persons as he thinks fit to sue for and recover, in manner in the Merchant Shipping Act, 1854, section 213, provided, those wages or expenses.

17 & 18 Vict.  
c 104  
18 & 19 Vict.,  
c 91

(2) Every person so authorized shall be entitled to sue and recover accordingly in any such Court, and shall be deemed to be a person filling a public office within the meaning of the Indian Evidence Act, 1872,<sup>4</sup> section 57, clause 7.

17 & 18 Vict.,  
c, 104

Proceedings  
to be insti-  
tuted in  
name of  
Secretary of  
State for  
India in  
Council.

33. All suits and proceedings under section thirty-two shall be instituted and carried on in the name of the Secretary of State for India in Council.

I of 1872.

Amendment  
of section 10  
of Act I of  
1859.

34. In section 10 of Act I of 1859,<sup>5</sup> for the words "Fees at the following rates shall be paid by all applicants for examination:—

For a certificate as master	.	.	.	ten rupees.
Ditto ditto as mate	.	.	.	five „

<sup>1</sup> Printed, General Acts, Vol V, Ed 1898, p 297

<sup>2</sup> See now ss 186 & 193 of the Merchant Shipping Act, 1894 (57 & 58 Vict, c 60), by which these Acts have been repealed

<sup>3</sup> For notifications authorizing persons in—

Bombay . . . . . see Bombay List of Local Rules and Orders, Ed 1896, Vol I, p cxiv;

Burma . . . . . see Burma Laws List, Ed 1897, p 170

<sup>4</sup> Printed, General Acts, Vol II, p 222

<sup>5</sup> The Indian Merchant Shipping Act, 1859, printed, General Acts, Ed 1898, Vol I, p 167

the following shall be substituted, namely:—Fees at such rates as the Local Government<sup>1</sup> may, from time to time, with the previous sanction of the Governor General in Council, fix in this behalf shall be paid by all applicants for examination.”

35. To section 11 of Act I of 1859<sup>2</sup> the following shall be added, namely:—

Addition to  
section 11 of  
Act I of  
1859.

“Provided that the Local Government may, in any case in which it has reason to believe that such report has been unduly made, require, before granting a certificate, a re-examination of the applicant or a further inquiry into his testimonials and character.”

36. For the last fifteen words of section 79 of Act I of 1859,<sup>2</sup> the following shall be substituted, namely:—“punished with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to two years, or with both.”

Amendment  
of section 79  
of Act I of  
1859.

37. Sections 9 to 16 (both inclusive) of Act I of 1859<sup>2</sup> shall not apply to ships registered under Act X of 1841<sup>3</sup> and trading between ports in India and the coasts of Arabia, when such ships are navigated and manned exclusively by Arabs, lascars or other Asiatic masters and seamen

Provisions as  
to examina-  
tions, etc., of  
masters not  
to apply to  
certain ships  
Amendment  
of Act X of  
1841, sec-  
tions 2, 15,  
17 & 23

38. In sections 2, 15, 17 and 23 of the said Act X of 1841,<sup>3</sup> for the words “on information in any Court of Her Majesty or the East India Company by the Advocates General of the respective Presidencies,” “by information as aforesaid,” “on information as aforesaid,” “upon information as aforesaid,” in each of the places where they occur, the following words shall be substituted, namely:—“on conviction before a Presidency Magistrate or Magistrate of the first class.”

<sup>1</sup> For instance of notification under this section, see Madras List of Local Rules and Orders, Vol. I, Ed 1898, p 206

<sup>2</sup> The Indian Merchant Shipping Act, 1859, printed, General Acts, Vol I, Ed 1898, p. 167.

<sup>3</sup> The Indian Registration of Ships Act, 1841, printed, General Acts, Vol I, Ed 1898, p. 19.

(Secs. 1-2)

ACT No. XIX of 1883<sup>1</sup>

[12th October, 1883.]

An Act to consolidate and amend the law relating to loans of money by the Government for agricultural improvements.<sup>2</sup>

WHEREAS it is expedient to consolidate and amend the law relating to loans of money by the Government for agricultural improvements: It is hereby enacted as follows:—

Short title

1. (1) This Act may be called the Land Improvement Loans Act, 1883.

Local extent  
Commence-  
ment.

(2) It extends to the whole of British India, but shall not come into force in any part of British India until such date as the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, appoint in this behalf.<sup>3</sup>

Acts XXVI  
of 1871 and  
XXI of 1876  
repealed

2. (1) The Land Improvement Act, 1871, and Act XXI of 1876 (*An Act to amend the Land Improvement Act, 1871*), shall, except as regards the recovery of advances made before this Act comes into force and costs incurred by the Government in respect of such advances, be repealed. XXVI of 1871.

<sup>1</sup> For the Statement of Objects and Reasons, *see* Gazette of India, 1882, Pt V, p. 954; for Report of the Select Committee, *see* *ibid*, 1883, Supplement, p. 1296; for Proceedings in Council, *see* *ibid*, 1882, Supplement, pp 1494, 1697, *ibid*, 1883, Supplement, p 2071

<sup>2</sup> Instruments executed by persons taking loans, or by their sureties, as security for the repayment of such loans, are exempted from stamp-duty, *see* the Indian Stamp Act, 1899, and s 2 (2) of this Act

<sup>3</sup> Act XIX of 1883 came into force in—

The Lower Provinces of Bengal *see* Calcutta Gazette, 1884, Pt. I, p. 1137.  
from 1st December, 1884.

The Punjab from 1st June, 1885 „ Punjab „ 1885, „ I, p. 378.  
Lower Burma from 19th September, 1885 „ Burma „ 1885, „ I, p. 306.

The Madras Presidency from 1st July, 1886 „ Fort St George „ 1886, „ I, p. 547.

The Bombay Presidency (except Aden and Perim) from 1st April, 1886 „ Bombay Govt „ 1886, „ I, p. 200.

The North-Western Provinces from 1st January, 1886 „ N-W. P. and Oudh „ 1885, „ I, p. 529.

Oudh from 1st January, 1886 „ Oudh „ 1885, „ I, p. 541.  
Coorg from 1st July, 1887 „ Coorg Dis- trict „ 1887, „ I, p. 658.

Assam from 1st June, 1891 „ Assam „ 1891, „ II, p. 193.

It has been extended, by notification under s 5 of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol II, p 467, to Ajmere-Merwara—*see* Gazette of India, 1886, Pt II, p 157.

It has been declared in force in—

the Santhál Parganas by the Santhál Parganas Settlement Regulation (III of 1872), s 3, as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886), printed, Bengal Code, Vol I, Ed 1889, p 597;

Upper Burma generally (except the Shan States) by the Upper Burma Laws Act 1886 (XX of 1886), s 6, *see* now the Burma Laws Act, 1898 (XIII of 1898), which repeals Act XX of 1886

(Secs. 3-5.)

(2) When in any Act, Regulation or notification passed or issued before this Act comes into force, reference is made to either of those Acts, the reference shall, so far as may be practicable, be read as applying to this Act or the corresponding part of this Act

3. In this Act, "Collector" means the Collector of land-revenue of a district, or the Deputy Commissioner, or any officer empowered by the Local Government by name or by virtue of his office to discharge the functions of a Collector<sup>1</sup> under this Act. "Collector" defined

4. (1) Subject to such rules as may be made under section 10, loans may be granted under this Act, by such officer as may, from time to time, be empowered in this behalf by the Local Government, for the purpose of making any improvement, to any person having a right to make that improvement, or, with the consent of that person, to any other person. Purposes for which loans may be granted under this Act

(2) "Improvement" means any work which adds to the letting value of land, and includes the following, namely:—

- (a) the construction of wells, tanks and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture;
- (b) the preparation of land for irrigation;
- (c) the drainage, reclamation from rivers or other waters, or protection from floods or from erosion or other damage by water, or land used for agricultural purposes or waste land which is culturable;
- (d) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;
- (e) the renewal or reconstruction of any of the foregoing works, or alterations therein or additions thereto; and
- (f) such other works as the Local Government, with the previous sanction of the Governor General in Council, may, from time to time, by notification in the local official Gazette, declare to be improvements for the purposes of this Act.

5. (1) When an application for a loan is made under this Act, the officer to whom the application is made may, if it is, in his opinion, expedient that public notice be given of the application, publish a notice, in such manner as the Local Government<sup>2</sup> may, from time to time, direct, calling Mode of dealing with applications for loans.

<sup>1</sup> Cf s 3 (10) of the General Clauses Act, 1897 (X of 1897), printed, General Acts, Vol VI.

<sup>2</sup> For notifications making such direction in—

Bombay . . . . . see Bombay List of Local Rules and Orders, Ed 1896, Vol I, p cxiv;

Burma . . . . . see Burma Laws List, Ed 1897, p. 175

(Sees. 6-7.)

upon all persons objecting to the loan to appear before him at a time and place fixed therein and submit their objections.

(2) The officer shall consider every objection submitted under subsection (1), and make an order in writing either admitting or overruling it:

Provided that, when the question raised by an objection is, in the opinion of the officer, one of such a nature that it cannot be satisfactorily decided except by a Civil Court, he shall postpone his proceedings on the application until the question has been so decided.

Period for  
repayment  
of loans.

6. (1) Every loan granted under this Act shall be made repayable by instalments (in the form of an annuity or otherwise) within such period from the date of the actual advance of the loan, or, when the loan is advanced in instalments, from the date of the actual advance of the last instalments, as may, from time to time, be fixed by the rules made under this Act.

(2) The period fixed as aforesaid shall not ordinarily exceed thirty-five years.

(3) The Local Government and Governor General in Council, in making and sanctioning the rules fixing the period, shall, in considering whether the period should extend to thirty-five years, or whether it should extend beyond thirty-five years, have regard to the durability of the work for the purpose of which the loan is granted, and to the expediency of the cost of the work being paid by the generation of persons who will immediately benefit by the work.

Recovery of  
loans.

7. (1) Subject to such rules as may be made under section 10, all loans granted under this Act, all interest (if any) chargeable (thereon) and costs (if any) incurred in making the same, shall, when they become due, be recoverable by the Collector in all or any of the following modes, namely:—

- (a) from the borrower—as if they were arrears of land-revenue due by him;
- (b) from his surety (if any)—as if they were arrears of land-revenue due by him;
- (c) out of the land for the benefit of which the loan has been granted—as if they were arrears of land-revenue due in respect of that land;
- (d) out of the property comprised in the collateral security (if any)—according to the procedure for the realization of land-revenue

(Secs. 8-9.)

by the sale of immoveable property other than the land on which that revenue is due:

Provided that no proceeding in respect of any land under clause (c) shall affect any interest in that land which existed before the date of the order granting the loan, other than the interest of the borrower, and of mortgagees of, or persons having charges on, that interest, and, where the loan is granted under section 4 with the consent of another person, the interest of that person, and of mortgagees of, or persons having charges on, that interest.

(2) When any sum due on account of any such loan, interest or costs is paid to the Collector by a surety or an owner of property comprised in any collateral security, or is recovered under sub-section (1) by the Collector from a surety or out of any such property, the Collector shall, on the application of the surety or the owner of that property (as the case may be), recover that sum on his behalf from the borrower, or out of the land for the benefit of which the loan has been granted, in manner provided by sub-section (1).

(3) It shall be in the discretion of a Collector acting under this section to determine the order in which he will resort to the various modes of recovery permitted by it.

8. A written order under the hand of an officer empowered to make loans under this Act granting a loan to, or with the consent of, a person mentioned therein, for the purpose of carrying out a work described therein, for the benefit of land specified therein, shall, for the purposes of this Act, be conclusive evidence—

Order granting loan conclusive on certain points.

(a) that the work described is an improvement within the meaning of this Act;

(b) that the person mentioned had at the date of the order a right to make such an improvement; and

(c) that the improvement is one benefiting the land specified.

9. When a loan is made under this Act to the members of a village community or to any other persons on such terms that all of them are jointly and severally bound to the Government for the payment of the whole amount payable in respect thereof, and a statement showing the portion of that amount which as among themselves each is bound to contribute is entered upon the order granting the loan and is signed by each of them and by the officer making the order, that statement shall be conclusive evidence of the portion of that amount which as among themselves each of those persons is bound to contribute.

Liability of joint borrowers as among themselves.

Power to  
make rules.

10. The Local Government, with the previous sanction of the Governor General in Council, may, from time to time, by notification in the local official Gazette, make rules<sup>1</sup> consistent with this Act to provide for the following matters, namely:—

- (a) the manner of making applications for loans ;
- (b) the officers by whom loans may be granted ;
- (c) the manner of conducting inquiries relative to applications for loans and the powers to be exercised by officers conducting those inquiries ;
- (d) the nature of the security to be taken for the due application and repayment of the money, the rate of interest at which, and the conditions under which, loans may be granted, and the manner and time of granting loans ;
- (e) the inspection of works for which loans have been granted ;
- (f) the instalments by which, and the mode in which, loans, the interest to be charged on them and the costs incurred in the making thereof, shall be paid ;
- (g) the manner of keeping and auditing the accounts of the expenditure of loans and of the payments made in respect of the same ;  
and
- (h) all other matters pertaining to the working of the Act.

Exemption  
of improve-  
ments from  
assessment  
to land-  
revenue.

11. When land is improved with the aid of a loan granted under this Act, the increase in value derived from the improvement shall not be taken into account in revising the assessment of land-revenue on the land :

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<sup>1</sup> For notifications making such rules in—

(1) Assam	see Assam List of Local Rules and Orders, Ed. 1893, pp 194 & 199 ;
(2) Bombay	see Bombay List of Local Rules and Orders, Ed. 1896, Vol I, p cxiv ;
(3) Burma	see Burma Laws List, Ed 1897, p 175 ;
(4) Madras	see Madras List of Local Rules and Orders, Ed. 1893, Vol I, pp 206, 207 ;
(5) N -W. P and Oudh	see North-Western Provinces and Oudh List of Local Rules and Orders, Ed 1894, pp 117, 118

For rules made by the Government of Bengal under this power, see Calcutta Gazette, 1884, Pt. I, p 1137 ; 1886, Pt I, p 15 ; 1897, Pt I, p 1352

For rules made by the Government of Madras, combined with rules under s 4 of the Agriculturists' Loans Act, 1884 (XII of 1884), see Fort St George Gazette, 1897, Pt I, p. 1332

Provided as follows:—

(1) where the improvement consists of the reclamation of waste-land, or of the irrigation of land assessed at unirrigated rates, the increase may be so taken into account after the expiration of such period as may be fixed by rules to be framed by the Local Government<sup>1</sup> with the approval of the Governor General in Council;

(2) nothing in this section shall entitle any person to call in question any assessment of land-revenue otherwise than as it might have been called in question if this Act had not been passed.

III of 1877.

12. (1) In the Indian Registration Act, 1877, section 17, clause (i), for the word “certificates” the words “orders granting loans” shall be substituted. Act III of 1877 amended.

(2) [*Rep. by the Repealing and Amending Act, 1891 (XII of 1891),<sup>2</sup> First Schedule.*]

(3) In the same Act, section 89, first clause,—

(a) for the words “a certificate” the words “a loan,” and

(b) for the words “such certificate” the words “his order,” shall be substituted.

## THE INDIAN EMIGRATION ACT, 1883

### CONTENTS.

#### CHAPTER I.

##### PRELIMINARY.

##### SECTIONS.

1. Short title and extent.
2. Exemption of Government vessels.
3. Commencement.

<sup>1</sup> For rules fixing such periods in—

(1) Assam . . . . . see Assam List of Local Rules and Orders, Ed 1893, p 199;

(2) Bombay . . . . . see Bombay List of Local Rules and Orders, Ed 1896, Vol I, p. cxiv;

(3) Burma . . . . . see Burma Laws List, Ed. 1897, p 175;

(4) N-W P and Oudh . . . . . see North-Western Provinces and Oudh List of Local Rules and Orders, Ed 1894, p 118

## SECTIONS.

4. Repeal of enactments.
  5. Saving for proceedings under repealed enactments.
  6. Definitions.
- 

## CHAPTER II.

## PORTS FROM WHICH, AND COUNTRIES TO WHICH, EMIGRATION IS LAWFUL.

7. Ports from which emigration is lawful.
  8. Countries to which emigration is lawful.
  9. Power for Governor General in Council to prohibit emigration to any country.
  10. Power for Local Government to suspend emigration pending reference to Governor General in Council.
  11. Revocation of prohibition
  12. Power for Local Government to prohibit emigration to specified country from the whole or any specified part of its territories.
  13. Saving for acts done before publication of notification
- 

## CHAPTER III.

## EMIGRATION AGENTS.

14. Appointment of Emigration Agents.
  15. Remuneration of Agents
- 

## CHAPTER IV.

## PROTECTORS OF EMIGRANTS AND MEDICAL INSPECTORS.

16. Appointment of Protectors of Emigrants.
  17. General duties of Protector.
  18. Appointment of Medical Inspector.
  19. Protector and Medical Inspector to have facilities for inspection.
- 

## CHAPTER V.

## RECRUITERS.

20. Protector of Emigrants to license recruiters.
21. Form of license.
22. Duration of license.
23. Countersignature of license.
24. Power for Magistrate to cancel countersignature in certain cases.
25. Notice to Protector of Emigrants of countersignature, refusal to countersign or cancellation of countersignature.

## SECTIONS.

26. Recruiter to be supplied with statement of terms of agreement he is authorized to offer.
  27. Accommodation to be provided by recruiters.
- 

## CHAPTER VI.

REGISTRATION OF EMIGRANTS AND EXECUTION OF AGREEMENTS TO  
EMIGRATE

28. Power for Local Government to appoint Registering Officers.
  29. Execution of agreements.
  30. Appearance of intending emigrants before Registering Officer.
  31. Examination and registration of emigrant.
  32. Power to refuse registration in case of married women.
  33. Examination of dependent
  34. Record of reasons for refusal to register.
  35. Execution and attestation of agreement.
  36. Contents of agreement.
  37. Record of registrations and agreements.
  38. Fee for preparation of agreement.
  39. Power to make agreement if over 16
  40. Power to make agreement on behalf of child or ward
- 

## CHAPTER VII.

## EMIGRATION DEPÔTS.

41. Depôts to be established at ports of embarkation.
  42. Licensing of depôts
  43. Inspection by Protector and Medical Inspector
  44. Report by Medical Inspector
  45. Treatment of emigrant suffering from disease.
- 

## CHAPTER VIII.

## CONVEYANCE OF EMIGRANTS TO DEPÔTS AND PROCEDURE ON ARRIVAL.

46. Emigrant not to be removed before registration.
47. Conveyance of emigrant to depôt.
48. Report of arrival at depôt.
49. Examination by Medical Inspector.
50. Power for Protector to order payment of expenses of return of emigrant in certain cases.
51. Payment of expenses of dependents and relatives.
52. Compensation to emigrant for ill-treatment on journey
53. Power for Protector to pay and recover expenses incurred on behalf of emigrant.

## CHAPTER IX.

## EMIGRANT-VESSELS.

•  
SECTIONS.

- 54 Master of emigrant-vessel to be licensed.
- 55 Application for license.
- 56. Survey and licensing of vessel.
- 57. Accommodation required on board emigrant-vessel.
- 58. Rules as to space on board emigrant-vessel.
- 59. Provisions, clothing, fuel and water.
- 60. Surgeons, attendants, medicines and stores.
- 61. Duty of Protector and Medical Inspector with respect to enforcement of foregoing sections.
- 62. Bond to be executed by master of emigrant-vessel.

## CHAPTER X.

## EMBARKATION AND DEPARTURE.

- 63 Time of embarkation after arrival.
- 64. Time at which emigrant-vessels may leave India.
- 65. Procedure if emigrant refuses to embark.
- 66. List of, and passes for, emigrants.
- 67 Disposal of the two copies of list to be given by master to Protector.
- 68. Disposal of the two copies of list to be given by master to Emigration Agent.
- 69. Examination of emigrants by Medical Inspector
- 70 [*Rep. by Act XVIII of 1890, section 6*]
- 71. Certificates from Protector of Emigrants and Emigration Agent.
- 72. Copies of Act and rules to be kept on board
- 73. Fee for each embarked emigrant.
- 74. Duty of master to see to observance of Act and rules on board his vessel.
- 75. Return of pass to emigrant.  
*Special Provisions as to Vessels sailing from Calcutta.*
- 76. Emigrant-vessel sailing from Calcutta to depart within twenty-four hours of embarkation.
- 77. Emigrant-vessel sailing from Calcutta to be towed to sea.
- 78. Power of surgeon of emigrant-vessel leaving Calcutta to require sick emigrants to be sent to hospital.
- 79. Power of surgeon of emigrant-vessel leaving Calcutta to require all emigrants to be landed when cholera appears.

## CHAPTER XI.

## RULES.

- 80. Power for Governor General in Council to make rules.
- 81. Publication of drafts and rules

## CHAPTER XII

## OFFENCES.

## SECTIONS

82. Unlawful recruiting.
  83. Recruiters removing unregistered emigrants to depôt.
  84. Fraudulently inducing Native to emigrate
  85. False representation of Government authority.
  86. Receiving emigrants on board vessel in contravention of Act.
  87. Fraudulent acts on part of master
  88. Clearance without compliance with Act
  89. Failure of master to comply with provisions as to lists and passes.
  90. Master taking on board, after clearance, emigrants not entered in list
  91. Master landing emigrant at other than specified country.
  92. Failure to comply with provisions as to leaving Calcutta
  93. Emigrant deserting or refusing to proceed to depôt
  94. Emigrant deserting from depôt or failing to embark.
  95. Causing or permitting embarkation of emigrant in contravention of section 63
  96. Institution of prosecutions
  97. Defence to charges of desertion.
  98. Power for Customs-officers to search and detain for purposes of Act.
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## CHAPTER XIII.

## SUPPLEMENTAL

99. Power for Local Government to appoint Magistrates for purposes of Act.
  100. Suits against Emigration Agent for breach of duty.
  101. Power for Governor General in Council to determine probable lengths of voyages for purposes of Act.
  102. Provision supplementary to section 6 (*I*) of this Act.
  103. Application of Act to emigration from British ports to French and Dutch colonies.
  104. Application of Act to proceedings in British India connected with emigration from French ports in India to French colonies.
  105. Prohibition of departure by land of a Native of India under an agreement to labour for hire in some country beyond the sea.
  106. Power to declare whole or part of Act and rules inapplicable to Natives of India engaged for Her Majesty's Government to labour for hire in any country beyond the sea.
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SCHEDULE I—COUNTRIES TO WHICH EMIGRATION IS LAWFUL

SCHEDULE II—FORM OF RECRUITER'S LICENSE.

SCHEDULE III—PROBABLE LENGTHS OF VOYAGE UNDER THIS ACT.

ACT No. XXI OF 1883.<sup>1</sup>

[18th December, 1883.]

## An Act to amend the law relating to the Emigration of Natives of India.

WHEREAS it is expedient to amend the law relating to the emigration of Natives of India; It is hereby enacted as follows:—

## CHAPTER I.

## PRELIMINARY

Short title and extent

1. (1) This Act may be called the Indian Emigration Act, 1883.

(2) It extends to the whole of British India.

Exemption of Government vessels.

2. Nothing in this Act or in any rule made under this Act shall apply to any vessel belonging to, or in the service of, Her Majesty or of the Government of India.

Commencement.

3. Except as to the power to make rules, this Act shall come into force on such day<sup>2</sup> as the Governor General in Council, by notification in the Gazette of India, appoints.

Repeal of enactments

4. On and from the day on which this Act comes into force, the Indian Emigration Act, 1871, and Act No. XIV of 1872 (*to exempt the Straits Settlements from the Indian Emigration Act, 1871*), shall be repealed. VII of 1871.

Saving for proceedings under repealed enactments

5. All notifications issued, contracts entered into, rules and appointments made, and licenses granted under any enactment hereby repealed, and in force on the day on which this Act comes into force, shall (so far as they are consistent with this Act) be deemed to have been respectively issued, entered into, made and granted under this Act.

Definitions.

6. In this Act, unless there is something repugnant in the subject or context,—

(1)<sup>3</sup> “emigrate” and “emigration” denote the departure by sea out of British India of a Native of India under an agreement to labour for hire in some country beyond the limits of India other than the island of Ceylon or the Straits Settlements.

<sup>1</sup> For the Statement of Objects and Reasons, see Gazette of India, 1881, Pt V, p 1082; for Debates in Council, see *ibid*, 1883, Supplement, p 2332

This Act has been declared in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation (III of 1872), s 3, and Schedule, as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886), s 6, printed, Bengal Code, Ed 1889, Vol. I, p 597

<sup>2</sup> The 1st April, 1886, see Gazette of India, 1886, Pt I, p 258

<sup>3</sup> See also s. 102 *infra*

(Chapter II —Ports from which, and Countries to which, Emigration is lawful. Sec. 7.)

Provided that a domestic servant when accompanying his employer shall not be deemed to emigrate within the meaning of the above definition :

(2) "emigrant" means any Native of India who emigrates, or has emigrated, within the meaning of the above definition, or who has been registered under this Act<sup>1</sup> as an emigrant, and includes any dependent of an emigrant :

(3) "dependent" means any of the following persons accompanying any emigrant, namely:—

(a) any woman who has not entered into an agreement to emigrate under this Act;

(b) any child in whose name and on whose behalf any such agreement has not been entered into; and

(c) any aged or incapacitated relative or friend :

(4) "Magistrate" means, in the Presidency-towns, a Presidency Magistrate, and elsewhere a District Magistrate or a Sub-divisional Magistrate, and includes also any person appointed by the Local Government, by name or by virtue of his office, to perform in any local area the functions of a Magistrate under this Act :

(5) "recruiter" includes a head recruiter or other person who collects Government, by name or by virtue of his office, to perform in any local area the functions of a Registering Officer under this Act :

(6) "recruiter" includes a head recruiter or other person who collects or receives emigrants recruited by other persons :

(7)<sup>2</sup> "vessel" includes anything made for the conveyance by water of human beings or property :

(8) "emigrant-vessel" means a vessel the master of which is licensed under this Act to carry emigrants therein : and

(9)<sup>3</sup> "master" means any person (except a pilot or harbour-master) having for the time being control or charge of a vessel

## CHAPTER II

### PORTS FROM WHICH, AND COUNTRIES TO WHICH, EMIGRATION IS LAWFUL

7. (1) Emigration shall not be lawful except from the ports of Calcutta, Madras and Bombay, and from such other ports as the Governor General

Ports from which emigration is lawful.

<sup>1</sup> See Ch. VI, *infra*, p. 676

<sup>2</sup> Cf s 3 (56) of the General Clauses Act, 1897 (X of 1897), General Acts, Vol VI

<sup>3</sup> Cf s 3 (32) *ibid*

(Chapter II.—Ports from which, and Countries to which, Emigration is lawful. Secs. 8-9)

a Council, from time to time, by notification in the Gazette of India, declares to be ports from which emigration is lawful.

(2) The Governor General in Council may at any time, by a like notification, revoke any notification issued under this section

(3) The Local Government may, from time to time, by notification in the official Gazette, fix for the purposes of this Act the limits of any port from which emigration is lawful.

Countries to which emigration is lawful

8. (1) Emigration shall not be lawful except to the countries specified in the first schedule hereto annexed, and to such other countries as the Governor General in Council, from time to time, by notification in the Gazette of India, declares to be countries to which emigration is lawful.<sup>1</sup>

(2) Every notification under this section must contain a declaration that the Governor General in Council has been duly certified that the Government of the country to which the notification refers has made such laws and other provisions as the Governor General in Council thinks sufficient for the protection of emigrants to that country during their residence therein.

Power for Governor General in Council to prohibit emigration to any country.

9. (1) Whenever the Governor General in Council has reason to believe that any of the grounds, hereinafter mentioned, for prohibiting emigration to any country to which emigration is lawful, exists, he may, by notification in the Gazette of India, declare that emigration to that country shall cease to be lawful from a day specified in the notification,<sup>2</sup> and from that day emigration to that country shall accordingly cease to be lawful.

(2) The grounds referred to in sub-section (1) of this section are—

- (a) that the plague or any other epidemic disease dangerous to human life has broken out in the country;
- (b) that the mortality among emigrants in the country is excessive;
- (c) that proper measures have not been taken for the protection of emigrants immediately on their arrival in the country or during their residence therein;
- (d) that the agreements made with emigrants, as such, before their departure from India are not duly enforced by the Government of the country; and

<sup>1</sup> Emigration to the Seychelles Islands has been declared to be lawful—see Notification No 572—12-7, Gazette of India, 1898, Pt I, p 298

<sup>2</sup> Emigration to the French Colonies of Cayenne (French Guiana), Réunion, Martinique and Guadeloupe has been prohibited, see Notifications Nos 114, 249E and 196—58-19E, dated respectively 12th July, 1877, 8th November, 1882, and 1st November, 1888, see Gazette of India, 1877, 1882 and 1888, Pt I, pp 356, 461 and 495, respectively.

(Chapter II.—Ports from which, and Countries to which, Emigration is lawful. Secs. 10-13)

- (e) that the Governor General in Council, having, either directly, or through the Secretary of State for India in Council, addressed the Government of the country with a view to obtain information regarding the condition or treatment of emigrants therein, has not within a reasonable time received the information asked for.

10. (1) Whenever the Local Government has reason to believe that, in any country to which emigration is lawful, the plague or other epidemic disease dangerous to human life has broken out, and that emigrants, if allowed to emigrate to that country, would be exposed to serious risk of life on arrival there, it may, by notification in the official Gazette, declare that emigration to that country from any port in the territories administered by it shall cease to be lawful pending a reference to the Governor General in Council

Power for Local Government to suspend emigration pending reference to Governor General in Council.

(2) The Local Government shall at once report the publication of a notification under this section, with the reasons for it, to the Governor General in Council, who shall thereupon publish a notification in the Gazette of India confirming or cancelling the notification published by the Local Government.

11. Whenever the Governor General in Council is satisfied that the ground on which a notification has been published by him under either of the two last foregoing sections with respect to any country has ceased to exist, he may, by notification in the Gazette of India, declare that emigration to that country shall again be lawful from a day to be specified in the notification

Revocation of prohibition

12. (1) The Local Government may, with the previous sanction of the Governor General in Council, by notification in the official Gazette, prohibit, from a day specified in the notification, all Natives of India or any specified class of Natives, from emigrating from the whole or any specified part of the territories under its administration to any specified country.

Power for Local Government to prohibit emigration to specified country from the whole or any specified part of its territories.

(2) The Local Government may, with the sanction, in like manner, vary or cancel any notification published under this section.

13. The publication of a notification under any of the four last foregoing sections shall not affect any act done, offence committed or proceedings commenced before the publication

Saving for acts done before publication of notification.

(Chapter III.—*Emigration Agents* Secs. 14-15. Chapter IV.—*Protectors of Emigrants and Medical Inspectors.* Secs. 16-17.)

## CHAPTER III

## EMIGRATION AGENTS.

Appointment  
of Emigra-  
tion Agents

14. (1) The Government of every country to which emigration is lawful may, from time to time, appoint a person to be Emigration Agent in any port from which emigration is lawful, and may suspend or remove any person so appointed

(2) An appointment under this section shall not take effect until the Local Government, by notification in the official Gazette, has declared its approval of the appointment

Remunera-  
tion of  
Agents.

15. The remuneration to be given to an Emigration Agent shall not depend on, or be regulated by, the number of emigrants sent by him, but shall be in the nature of a fixed salary :

Provided that the Governor General in Council may, from time to time, authorize the payment to specified Emigration Agents of special fees for occasional work.

## CHAPTER IV.

## PROTECTORS OF EMIGRANTS AND MEDICAL INSPECTORS.

Appointment  
of Protectors  
of Emi-  
grants.

16. (1) The Local Government may, from time to time, appoint a proper person to be the Protector of Emigrants for any port within the territories administered by it from which emigration is lawful.<sup>1</sup>

(2) The Governor General in Council may, from time to time, define the local area to which the authority of any Protector of Emigrants so appointed shall extend

(3) Every Protector of Emigrants may be suspended or removed by the Local Government which appointed him.

(4) Every Protector of Emigrants shall be a public servant within the meaning of the Indian Penal Code.<sup>2</sup>

General  
duties of  
Protector.

17. Every Protector of Emigrants, in addition to the special duties assigned to him by this Act or the rules made under this Act, shall—

- (a) protect and aid with his advice all emigrants ;
- (b) cause, so far as he can, all the provisions of this Act and of the rules made under this Act to be complied with ;
- (c) inspect, on arrival, all vessels bringing return-emigrants to the port for which he is Protector ;

<sup>1</sup> For notification appointing a Protector of Emigrants for the Port of Bombay, see Bombay List of Local Rules and Orders, Ed 1896, Vol I, p cxiv

<sup>2</sup> Printed, General Acts, Vol I, Ed 1898, p 240

(Chapter IV.—*Protectors of Emigrants and Medical Inspectors.*  
*Secs. 18-19 Chapter V.—Recruiters Sec 20*)

(d) enquire into the treatment received by the return-emigrants both during the period of their service in the country to which they emigrated, and also during the return voyage, and report thereon to the Local Government, and

(e) aid and advise the return-emigrants so far as he reasonably can.

18. (1) The Local Government may, from time to time, appoint a Medical Inspector of Emigrants at each port from which emigration is lawful, and may suspend or remove him. Appointment of Medical Inspector.

(2) Every Medical Inspector of Emigrants shall be a public servant Protector and Medical Inspector to have facilities for inspection.  
 XLV of 1850. within the meaning of the Indian Penal Code<sup>1</sup>

19. Every Emigration Agent, and all persons in charge of, or employed in, any depôt established under this Act,<sup>2</sup> or in charge of, or employed in, any emigrant-vessel, shall give the Protector of Emigrants and the Medical Inspector of Emigrants every facility for making such inspections, examinations and surveys as are required by this Act or by the rules made under this Act, or as those officers may deem necessary or proper, and shall afford them all such information as they may reasonably require.

## CHAPTER V.

### RECRUITERS.

20. (1) The Protector of Emigrants at each of the ports from which emigration is lawful shall, on the application of the Emigration Agent for any country to which emigration is lawful, grant licenses to so many fit persons as to the Protector seems necessary, to be recruiters of emigrants within the local area to which the authority of the Protector extends. Protector of Emigrants to license recruiters.

(2) A person shall not, unless he holds a license granted under this Chapter,—

(a) enter into, or attempt to enter into, any agreement with any person purporting to bind him to emigrate, or

(b) in consideration of any hire or reward, induce, or attempt to induce, any person to leave any place for the purpose of emigrating, or

(c) act or be employed in any other respect as a recruiter of emigrants.

(3) Every recruiter shall produce his license when called upon to do so by any Magistrate or officer in charge of a police-station

<sup>1</sup> Printed, General Acts, Vol. I, Ed 1898, p 240

<sup>2</sup> See Ch VII, *infra*, p 679

Form of  
license.

21. Every license granted under this Chapter shall specify the particular country for which, and the local area within which, the holder is licensed to recruit, and may be in the form set forth in the second schedule hereto annexed

Duration of  
license.

22. (1) A license granted under this Chapter shall not be in force for a longer period than one year from the day on which it comes into force.

(2) The Protector of Emigrants may, on the ground of misconduct, cancel any license granted by him under this Chapter before the expiration of the period for which it is in force.

Counter-  
signature of  
license

23. (1) A recruiter shall not, in any place beyond the limits of a port from which emigration is lawful, enter, or attempt to enter, into any agreement with any person purporting to bind him to emigrate, or induce or assist, or attempt to induce or assist, any person to leave any place for the purpose of emigrating, or act or be employed in any other respect as a recruiter of emigrants, unless his license bears the countersignature of the District Magistrate.

(2) If a District Magistrate has satisfied himself, after such enquiry as he thinks necessary, that the licensee is, by character or from any other cause, unfitted to be a recruiter under this Act, he may refuse to countersign a recruiter's license.

(3) If a District Magistrate has satisfied himself, after such enquiry as aforesaid, that sufficient and proper accommodation has not been provided in a suitable place, or is not available, for such intending emigrants or emigrants as may be collected by the recruiter pending their registration or removal to the depôt at the port of embarkation, he may refuse to countersign a recruiter's license or to decide whether he will countersign his license until after the expiration of such time as may in his opinion be reasonable.

(4) Before a Magistrate refuses to countersign, or defers his countersignature of, a recruiter's license, he shall record in writing his reasons for so doing.

Power for  
Magistrate  
to cancel  
countersignature  
in certain  
cases

24. If any Magistrate, having countersigned a recruiter's license, afterwards finds reason to think that the licensee is, by character or from any other cause, unfitted to be a recruiter under this Act, or that the accommodation provided for intending emigrants or emigrants collected by him has become unsuitable or has ceased to be available, he may require the licensee to produce his license, and may cancel the countersignature on it, or may impound the license and send it for cancellation to the Protector of Emigrants who granted it.

25. When a Magistrate countersigns, or refuses to countersign, a recruiter's license, or cancels the countersignature on it, he shall at once report the countersignature, or the refusal or cancellation, and the grounds of the refusal or cancellation, to the Protector of Emigrants who granted the license.

Notice to Protector of Emigrants of countersignature, refusal to countersign or cancellation of countersignature

26. (1) The Emigration Agent on whose application any recruiter is licensed shall supply the recruiter with a written or printed statement, signed by the Agent, and countersigned by the Protector of Emigrants, of the terms of agreement which the recruiter is authorised to offer on behalf of the Agent to intending emigrants.

Recruiter to be supplied with statement of terms of agreement he is authorised to offer.

(2) The statement shall be both in English and in the Vernacular language or languages of the local area within which the recruiter is licensed to recruit.

(3) The recruiter shall give a true copy of the statement to every person whom he invites to emigrate, and shall produce the statement for the information of any Magistrate or officer in charge of a police-station, when called upon to do so by the Magistrate or officer.

27. (1) Every recruiter shall provide sufficient and proper accommodation in a suitable place for such intending emigrants or emigrants as may be collected by him pending their registration or removal to the port of embarkation.

Accommodation to be provided by recruiters.

(2) The place where the accommodation is provided shall have a board fixed in some conspicuous position specifying the purpose for which the place is used.

(3) Every District Magistrate, and any subordinate Magistrate or officer of Police authorized in this behalf by a rule made under this Act, shall have, for the supervision and regulation of the places where accommodation is provided under this section, the same powers as are by this Act<sup>1</sup> conferred on a Protector of Emigrants in respect of dépôts at the port of embarkation.

(4) All recruiters or other persons in charge of these places shall afford every Magistrate and any officer of Police authorised as aforesaid in this behalf every facility for visiting and inspecting them.

<sup>1</sup> See Ch VII, *infra*, p 679

(Chapter VI.—Registration of Emigrants and Execution of Agreements to emigrate. Secs. 28-32.)

## CHAPTER VI

### REGISTRATION OF EMIGRANTS AND EXECUTION OF AGREEMENTS TO EMIGRATE.

Power for  
Local Gov-  
ernment to  
appoint Re-  
gistering  
Officers.

28. The Local Government may, from time to time, appoint any person, by name or by virtue of his office, to perform in a specified local area, but subject to the control of the District Magistrate or such other officer as the Local Government appoints, by name or by virtue of his office, in this behalf, the functions of a Registering Officer<sup>1</sup> under this Act.

Execution of  
agreements.

29. Every agreement to emigrate entered into by any person must,—

- (a) if executed within the limits of any port from which emigration is lawful, be executed in the presence of the Protector,
- (b) if executed elsewhere, be executed in the presence of a Registering Officer.

Appearance  
of intending  
emigrants  
before Regis-  
tering Officer.

30. Every recruiter who desires to engage any person to emigrate shall appear before a Registering Officer or the Protector of Emigrants (as the case may be) with that person, and with any persons intending to accompany that person as his dependents.

Examination  
and registra-  
tion of emi-  
grant.

31. (1) The Registering Officer or Protector shall thereupon examine the person, apart from the recruiter, with reference to his intended agreement; and, if it appears that he is competent and willing to enter into the agreement and understands its nature, that he has not been induced to enter into it by any coercion, undue influence, fraud, misrepresentation or mistake,<sup>2</sup> [and] that its terms are in conformity with law, and are such as, according to the statement furnished to the recruiter under section 26, he was authorised to offer, shall, subject to the provisions of section 33, register in a book to be kept for the purpose, in such form as the Governor General in Council, from time to time, by rules made under this Act, prescribes, the name, sex, name of the father, caste, occupation and age of the intending emigrant, and the name of the village or place of which he is a resident, and such other particulars (if any) concerning him and his dependents (if any) as the Governor General in Council, from time to time, by rules made under this Act, prescribes.

Power to  
refuse re-  
gistration in  
case of mar-  
ried women.

32. (1) Notwithstanding anything contained in the last foregoing section, the Registering Officer or Protector may refuse to register any married woman under that section if he finds that her husband does not consent to her emigrating.

<sup>1</sup> For notification appointing Registering Officers in Madras, *see* Madras List of Local Rules and Orders, Vol I, Ed 1898, p 207

<sup>2</sup> Inserted by the Indian Emigration Act (1883) Amendment Act, 1890 (XVIII of 1890), s 1, printed, General Acts, Vol V, Ed 1898, p 460.

(Chapter VI.—Registration of Emigrants and Execution of Agreements to emigrate. Secs 33-35.)

(2) The Registering Officer or Protector may also, in the case of any woman whom he believes to be married, refuse to decide whether he will register her until after the expiration of such time, not exceeding ten days, as he thinks fit

33. (1) When any person appears before a Registering Officer or Protector under section 30 as a dependent of an intending emigrant, the Registering Officer or Protector shall, if the person is able to give intelligent answers to questions, examine him, apart from the recruiter, as to his dependence on the intending emigrant whom he is about to accompany, and, as to his willingness to emigrate. Examination of dependent.

(2) Where the Registering Officer or Protector sees reason to doubt the existence of the dependence or willingness, he may, if he thinks fit, refuse to register the intending emigrant, unless the name of the dependent is omitted from the register

34. Whenever the Registering Officer or Protector refuses to register any intending emigrant, he shall record his reasons for the refusal. Record of reasons for refusal to register

35 (1) When the particulars concerning any intending emigrant and his dependents (if any) have been registered, the Registering Officer or Protector shall cause an agreement to be prepared <sup>1</sup> [in duplicate,] and shall call on the recruiter and the intending emigrant to execute the agreement <sup>1</sup> [in duplicate] in his presence, and, if they execute it, shall attest the execution with his signature. Execution and attestation of agreement

(2) An agreement to emigrate shall not be of any effect until the particulars concerning the intending emigrant and his dependents (if any) have been registered, and the agreement has been executed and attested under this Act.

(3) When the particulars concerning any intending emigrant and his dependents (if any) have been registered and an agreement has been executed and attested under this Act, the intending emigrant shall be deemed to be registered under this Act as an emigrant

<sup>2</sup> [(4) Any number of intending emigrants appearing with the same recruiter before the Registering Officer or Protector at the same time, and desiring to emigrate on the same terms to the same country, may, with the permission of the Registering Officer or Protector (as the case may be),

<sup>1</sup> The words 'in duplicate' were substituted for the words "in triplicate" by the Indian Emigration Act (1883) Amendment Act, 1890 (XVIII of 1890), s 2 (1), printed, General Acts, Vol V, Ed 1898, p 460

<sup>2</sup> Added by Act XVIII of 1890, s 2 (2)

(Chapter VI.—Registration of Emigrants and Execution of Agreements to emigrate Secs. 36-40)

Contents of  
agreement

execute one instrument of agreement under this section, instead of each of such intending emigrants executing a separate instrument.]

36. Every agreement to emigrate shall contain a copy of the particulars registered concerning the intending emigrant and his dependents (if any) under section 31, and on the reverse such particulars concerning the nature, duration and term of service and the remuneration of the emigrant, and such other matters (if any) as the Governor General in Council from time to time, by rules made under this Act, prescribes.

Record of  
registrations  
and agree-  
ments

37. <sup>1</sup>[When the agreement has been executed and attested—

(a) one of the copies thereof shall be delivered to the emigrant, and the other shall be retained by the Protector or sent by the Registering Officer to him, and

(b) a certified copy of the particulars registered under section 31 concerning the emigrant or emigrants by whom the agreement was executed, and concerning his or their dependents (if any), shall be delivered to the recruiter for transmission to the Emigration Agent.]

Fee for pre-  
paration of  
agreement.

38. For the preparation of every agreement under this Chapter the recruiter or Emigration Agent shall pay such fee as the Governor General in Council, from time to time, by notification in the Gazette of India, prescribes:<sup>2</sup>

Provided that the Governor General in Council may at any time, by like notification, declare that the fee payable under this section shall be consolidated, either generally or in any specified local area, with the fee payable under section 73.

Power to  
make agree-  
ment if over  
16

39. Notwithstanding anything to the contrary in the Indian Contract Act, 1872,<sup>3</sup> it shall be lawful for any person of the age of sixteen years or upwards to enter in manner in this Act provided into an agreement to emigrate to any place to which emigration is lawful.

Power to  
make agree-  
ment on  
behalf of  
child or  
ward.

40. Any person entering into an agreement to emigrate, and being the parent or guardian of a child under the age of sixteen years and above the age of ten years, may, in the name of and on behalf of the child, enter into an agreement in manner in this Act provided binding the child to emigrate with him.

<sup>1</sup> This section was substituted for the original section by the Indian Emigration Act (1883) Amendment Act, 1890 (XVIII of 1890), s 3, printed, General Acts, Vol V, Ed 1898, p 460

<sup>2</sup> See Notifications No 121-E, dated the 1st April, 1886, Gazette of India, 1886, Pt I, p 277; and No 7-E, dated 29th March, 1888, Gazette of India, 1888, Pt I, p 147.

<sup>3</sup> Printed, General Acts, Vol II, Ed 1898, p 299

## CHAPTER VII.

## EMIGRATION DEPÔTS.

41. Every Emigration Agent shall establish at the port for which he is appointed a suitable depôt for the reception and lodging of emigrants before embarkation for the country for which he is Emigration Agent, and shall provide all necessary food and clothing for all emigrants during their stay at the depôt.

Depôts to be established at ports of embarkation.

42. (1) A depôt established under the last foregoing section shall not be used for the reception and lodging of emigrants until it has been inspected and approved by the Protector of Emigrants and the Medical Inspector of Emigrants, and a license for its use has been granted by the Protector.

Licensing of depôts

(2) A license under this section shall not be granted for a longer period than one year from the day on which it comes into force.

(3) The Protector of Emigrants may at any time cancel a license under this section—

(a) if he considers that the depôt for which it was granted is unhealthy, or has in any respect become unsuitable for the purpose for which it was established, or

(b) if the Emigration Agent fails, after reasonable notice, to comply with any of the requirements of this Act or of the rules made under this Act.

43. The Protector of Emigrants and the Medical Inspector shall, from time to time, and at least once in every week during which any emigrants may be kept in any depôt at the port for which they are Protector and Medical Inspector, respectively, inspect the emigrants in that depôt and examine the state of the depôt and the manner in which the emigrants therein are lodged, fed, clothed and otherwise provided for and attended to

Inspection by Protector and Medical Inspector

44. The Medical Inspector shall report to the Protector of Emigrants any circumstance that may come to his knowledge showing that any depôt is not suitable for its purpose, or that the emigrants lodged therein are treated with any oppression or neglect

Report by Medical Inspector.

45. (1) The Medical Inspector may, if he thinks fit, direct that any emigrant suffering from any disease likely to be dangerous to his neighbours shall be isolated or excluded from the depôt

Treatment of emigrant suffering from disease

(2) The Medical Inspector may, if he thinks fit, order the removal of any emigrant so suffering to a proper hospital for treatment at the expense

(Chapter VIII.—Conveyance of Emigrants to Depôts and Procedure on Arrival. Secs. 46-49)

of the Emigration Agent; and the expense (if any) incurred by the Protector of Emigrants in respect of the removal of the emigrant and his treatment in the hospital shall be recoverable from the Emigration Agent by the Protector of Emigrants, with interest thereon at the rate of six per centum per annum from the date on which the expense was incurred.

## CHAPTER VIII.

### CONVEYANCE OF EMIGRANTS TO DEPÔTS AND PROCEDURE ON ARRIVAL.

Emigrant not  
to be removed  
before regis-  
tration.

46. A recruiter shall not remove or attempt to remove any intending emigrant to a depôt, or induce or attempt to induce him to go to a depôt, or to leave the local limits of the jurisdiction of the Magistrate by whom the recruiter's license has been countersigned, or aid him in going to a depôt, or in leaving any such local limits, until the intending emigrant has been registered under this Act as an emigrant.

Conveyance  
of emigrant  
to depôt.

47. (1) Every emigrant must, after he has been registered under this Act, be conveyed with all convenient despatch, by or under the orders of the recruiter or Emigration Agent, to the depôt established at the port of embarkation by the Emigration Agent on whose application the recruiter has been licensed

(2) When an emigrant has been registered at a place beyond the limits of the port of embarkation, he must, while proceeding to the depôt, be accompanied throughout the journey either by the recruiter himself, or by a competent person appointed by him with the approval of a Magistrate.

(3) The Magistrate shall give to the person so appointed a certificate signed by him stating that he has been appointed for the journey to the depôt.

(4) The recruiter or the person so appointed shall, throughout the journey, provide the emigrant with proper and sufficient food and lodging.

Report of  
arrival at  
depôt

48. (1) The copy of the <sup>1</sup>[particulars registered under section 31] reported by the person in charge of the depôt to the Emigration Agent, and by the Agent to the Protector of Emigrants.

Examination  
by Medical  
Inspector.

49. (1) The copy of the <sup>1</sup>[particulars registered under section 31] received by the recruiter from the Registering Officer or Protector must, as

<sup>1</sup> These words and figures were substituted for the word "agreement" by the Indian Emigration Act (1883) Amendment Act, 1890 (XVIII of 1890), s 4, printed, General Acts, Vol V, Ed 1898, p 460

(Chapter VIII—Conveyance of Emigrants to *Dépôts* and Procedure on Arrival Secs 50-51)

soon as conveniently may be after the arrival of the emigrant at the *dépôt*, be shown by the Emigration Agent to the Medical Inspector of Emigrants

(2) The Medical Inspector shall examine each emigrant entered in the <sup>1</sup> [said copy] to ascertain whether he is fit, having regard to his age and state of health, to undertake the journey to the country to which he has agreed to emigrate

(3) The Medical Inspector, if satisfied of his fitness, shall give a certificate to that effect to the Emigration Agent. If not so satisfied, he shall give a certificate to that effect to the Protector of Emigrants.

50. (1) In any of the following cases, namely,—

- (a) if the Medical Inspector of Emigrants finds that an emigrant is, or has become, unfit to undertake the journey to the country to which he has agreed to emigrate, and if the Protector of Emigrants considers that the emigrant has not dishonestly represented himself as fit to undertake the journey, or
- (b) if the Protector finds that any such irregularity has occurred in the recruitment or treatment by the recruiter of any emigrant as makes it just to rescind the agreement to emigrate, or
- (c) if the Emigration Agent refuses to fulfil the agreement entered into with the emigrant,

Power for Protector to order payment of expenses of return of emigrant in certain cases.

the Protector may order the Emigration Agent to pay to the emigrant such sum as the Protector deems reasonable as compensation, and, when the emigrant has been registered at a place beyond the limits of the port of embarkation, such reasonable sum as is necessary to enable him to return to the place at which he was registered, and may take any steps which he thinks necessary for the conveyance of the emigrant to that place

(2) Any emigrant who has been registered at any place beyond the limits of the port of embarkation, and who from his state of health is, in the opinion of the Medical Inspector of Emigrants, unfit to undertake at once the return-journey to the place at which he was registered, shall be entitled to be fed, lodged, clothed and attended to at the depot at the expense of the Emigration Agent until he is reported by the Medical Inspector fit to undertake the return-journey

51. (1) When any order is made under the last foregoing section with reference to any emigrant who was registered at any place beyond the

Payment of expenses of dependents and relatives.

<sup>1</sup> The words "said copy" were substituted for the word "agreement" by the Indian Emigration Act (1883) Amendment Act, 1890 (XVIII of 1890), s 4, printed, General Acts, Vol V, Ed 1898, p 460

(Chapter VIII.—*Conveyance of Emigrants to Dépôts and Procedure on Arrival. Secs 52-53*)

limits of the port of embarkation, any emigrant who has been registered as his dependent,

or any emigrant who, not being a dependent, is the father, mother, wife, husband, son, daughter, brother, sister, guardian or ward of the emigrant, shall be entitled—

(a) to be conveyed at the expense of the Emigration Agent with the emigrant to the place at which he was registered; and

(b) if the emigrant is unable to travel, to be lodged, fed and clothed in the dépôt at the expense of the Emigration Agent until the emigrant is able to travel.

(2) The Protector of Emigrants may include any expenses incurred under this section in an order made under the last foregoing section with respect to the emigrant

Compensation to emigrant for ill-treatment on journey.

52. If it appears that during the journey to the dépôt any emigrant has suffered any ill-treatment, or that, in the case of any emigrant who has been registered at a place beyond the limits of the port of embarkation, the provisions of section 47 have not been complied with, the Protector of Emigrants may order the Emigration Agent to pay—

(a) to the emigrant a reasonable sum by way of compensation, and,

(b) if any expenses have been incurred by or under the orders of the Protector on behalf of the emigrant by reason of the neglect to comply with the provisions of section 47, to the Protector the expenses so incurred.

Power for Protector to pay and recover expenses incurred on behalf of emigrant.

53. (1) On failure of the Emigration Agent for twenty-four hours to comply with an order of the Protector for the payment of any sum to an emigrant under any of the last three foregoing sections, the Protector may pay the same to the emigrant.

(2) Every sum paid by the Protector to an emigrant under sub-section (1), and, on failure of the Emigration Agent for twenty-four hours to comply with an order for payment thereof under the last foregoing section, every sum which the Protector may have ordered the Emigration Agent to pay to him under that section, shall be recoverable from the Emigration Agent with interest thereon at the rate of six per centum per annum from the date of payment.

(3) Further proof shall not be required by any Court in any such case than that the Protector gave the Emigration Agent an order to pay the sum, and that the Emigration Agent for twenty-four hours failed to comply with the order.

## CHAPTER IX.

## EMIGRANT-VESSELS

54. It shall not be lawful to receive any emigrant on board any vessel unless a license to carry emigrants in the vessel has been obtained from the Local Government.

Master of  
emigrant-  
vessel to be  
licensed

55. (1) When the master or owner of any vessel desires to obtain a license to carry emigrants in his vessel, he shall apply in writing through the Protector of Emigrants to the Local Government for the license.

Application  
for license.

(2) The application must state the number of emigrants which, according to the rules as to space contained in this Chapter, the applicant deems the vessel capable of carrying, and the tonnage and such other particulars respecting the vessel as the Governor General in Council, from time to time, by rules made under this Act, prescribes.

56. (1) The Protector of Emigrants shall cause the vessel to be surveyed by a competent person at the cost of the master or owner, with a view to ascertain her seaworthiness, and the extent and nature of her accommodation for emigrants, and to ascertain that she is properly ventilated, and is supplied with all the tackle, apparel and furniture requisite for her intended voyage:

Survey and  
licensing of  
vessel.

<sup>1</sup> [Provided that, if the vessel is a steam-ship having a certificate of survey granted by the Board of Trade or any British Colonial Government or under the Indian Steam-ships Act, 1884,<sup>2</sup> and in force and applicable to her intended voyage, the survey under this sub-section with a view to ascertain her seaworthiness shall not extend to her hull or machinery unless the Protector of Emigrants has reason to believe that, since the grant of the certificate, her hull or machinery, has sustained injury or damage or has otherwise become inefficient]

(2) If the Local Government is of opinion that the vessel is in all respects suitable for the carrying of emigrants under this Act, and is properly manned and officered, it shall give to the master of the vessel a license to carry emigrants therein specifying the number of emigrants which may be received on board.

57. (1) A license shall not be granted under the last foregoing section unless—

(a) there is provided for the emigrants, either between decks or,

Accommoda-  
tion required  
on board  
emigrant-  
vessel.

<sup>1</sup> Added by the Indian Emigration Act (1883) Amendment Act, 1890 (XVIII of 1890), 1890, s 5, printed, General Acts, Vol VI

<sup>2</sup> Printed, *infra*, p 740

*(Chapter IX.—Emigrant-vessels Secs. 58-62)*

subject to the approval of the Protector of Emigrants and the Medical Inspector, in cabins on the upper deck, a space devoted to the exclusive use of the emigrants having in every part a height of not less than six feet;

(b) a separate place is fitted up for a hospital; and

(c) such arrangements are made for the separation of women (married or single) and children from the other emigrants as the Governor General in Council, from time to time, by rules made under this Act, prescribes.

(2) The cabins on the upper deck provided under clause (a) of this section must be firmly secured and entirely covered in

Rules as to  
space on  
board emi-  
grant-vessel

58. Every emigrant-vessel must contain within the space referred to in clause (a) of the last foregoing section at least twelve superficial feet and seventy-two cubic feet of space for each emigrant :

Provided that two emigrants under the age of ten years shall for the purposes of this section count as one only.

Provisions,  
clothing,  
fuel and  
water.

59. There must be on board every emigrant-vessel, at the time of departure of the vessel from the port at which they embark, provisions, clothing, fuel and water for the emigrants (over and above the supply for the masters, officers and crew, and of the cabin and other passengers, if any) in such quantity and of such description and quality as the Governor General in Council, from time to time, by rules made under this Act, prescribes.

Surgeons,  
attendants,  
medicines  
and stores

60. Every emigrant-vessel must, at the time of departure of the vessel from the port at which the emigrants embark, have on board, and must carry with her, a properly qualified surgeon, and also such compounders, interpreters and attendants subordinate to the surgeon, and such medicines and other stores, in such quantity and of such quality as the Governor General in Council, from time to time, by rules made under this Act, prescribes.

Duty of Pro-  
tector and  
Medical In-  
spector with  
respect to  
enforcement  
of foregoing  
sections.

61. The Protector of Emigrants and the Medical Inspector of Emigrants shall see personally that all the provisions of the last two foregoing sections are complied with.

Bond to be  
executed by  
master of  
emigrant-  
vessel.

62. (1) Every master licensed under this Act shall, on the requisition of the Protector of Emigrants, and before any emigrant embarks on board his vessel, execute to the Protector, in duplicate, a bond, in such form as the Local Government, from time to time, prescribes, binding himself and the owner of the vessel in a penal sum of ten thousand rupees, to perform the

duties imposed by this Act or any rule made under this Act on a master and owner, respectively

(2) The Protector of Emigrants shall forward one copy of the bond to such officer as may be appointed in this behalf by the Government of the country to which the emigrants are to be conveyed, or, in the case of a foreign colony, to the British Consular Agent, and the other copy to the Local Government.

## CHAPTER X

### EMBARKATION AND DEPARTURE

**63.** An emigrant shall not embark, except with the permission of the Protector of Emigrants, until seven days have elapsed from the date of his arrival at the dépôt

Time of  
embarkation  
after arrival

**64.** (1) An emigrant-vessel shall not sail from any port in British India—

Time at  
which emi-  
grant-vessels  
may leave  
India.

(a) to any country west of the Cape of Good Hope, except at such seasons as the Governor General in Council, from time to time, by rules made under this Act, prescribes as seasons during which it shall be lawful for emigrant-vessels generally, or of a class to which the vessel belongs, to sail to that country,

(b) to any country during any season which the Governor General in Council, from time to time, by notification in the Gazette of India, declares to be a season during which the sailing of emigrant-vessels to that country is prohibited.

**65.** If any emigrant without sufficient cause refuses or neglects to embark when called on by the Emigration Agent to do so, it shall not be lawful to compel the emigrant to embark, but nothing in this section shall affect the civil or criminal liabilities which an emigrant incurs by reason or in respect of any such refusal or neglect.

Procedure if  
emigrant  
refuses to em-  
bark

**66.** (1) When any emigrants are about to embark on board any vessel, the Emigration Agent shall supply the master of the vessel with four copies of a list, specifying, as accurately as may be, the names, ages and occupations of the emigrants, and the names of their respective fathers.

List of, and  
passes for,  
emigrants.

(2) The master shall not receive any emigrant on board unless he is provided with a pass, signed by the Emigration Agent, and countersigned by the Protector, stating the name and age of the emigrant, the name of his father, and the country to which he has agreed to emigrate, and certifying that he is in a fit state of health to undertake the voyage to that country.

*(Chapter X.—Embarkation and Departure. Secs. 67-69)*

(3) Every emigrant shall on embarkation deliver the pass to the master.

(4) The master shall compare the emigrants who embark and the passes delivered by them with the list supplied by the Emigration Agent; and, if the list appears to be correct and to correspond with the passes delivered and with the emigrants embarked, the master shall sign the four copies of the list.

(5) The master shall not permit any emigrant to remain on board who has not delivered up his pass to the master or is not mentioned in the list.

Disposal of  
the two  
copies of list  
to be given  
by master to  
Protector.

67. (1) When the copies of the list have been signed, the master shall give two of the copies to the Protector of Emigrants, who shall sign them if he believes them to be correct.

(2) The Protector shall send one of the copies so signed by him by the vessel which carries the emigrants to such officer as may be appointed in this behalf by the Government of the country to which the emigrants have agreed to emigrate, or, in the case of a foreign colony, to the British Consular Agent, and shall file the other copy in his own office

Disposal of  
the two  
copies of list  
to be given  
by master  
to Emi-  
gration  
Agent.

68. (1) The master shall give to the Emigration Agent the two remaining copies of the list.

(2) The Emigration Agent shall thereupon sign the copies, and shall return one of them to the master

(3) The master shall, on the arrival of the vessel at the country to which the emigrants have agreed to emigrate, and before their disembarkation, deliver the copy so returned to him to such officer as may be appointed in this behalf by the Government of the country, or, in the case of a foreign colony, to the British Consular Agent.

Examination  
of emigrants  
by Medical  
Inspector.

69. (1) The Medical Inspector shall be present at the embarkation of all emigrants, and shall examine each emigrant to ascertain if he is in a fit state of health to undertake the voyage to the country to which he has agreed to emigrate; and, if he finds that he is not fit to undertake the voyage, he shall inform the Protector accordingly.

(2) The Protector may thereupon refuse to permit the emigrant to embark; and any emigrant, registered as a dependent of an emigrant whom the Protector has refused to permit to embark, or any emigrant who, not being a dependent, is the father, mother, wife, husband, son, daughter, brother, sister, guardian or ward of the emigrant, may, notwithstanding anything in this Act, refuse to embark

(3) The provisions of sections 50, 51 and 53 shall apply to emigrants who under this section are not permitted to embark, and to any emigrants

## (Chapter X—Embarkation and Departure. Secs. 71-73)

who under this section refuse to embark, and to recovery of expenses incurred under this Act in respect of them.

70. [*Emigration Agent to deliver agreements to emigrate to master*] *Rep. by Act XVIII of 1890, section 6.*

71. Before any emigrant-vessel clears out of any port, the master of the vessel shall obtain from the Protector of Emigrants at the port, and from the Emigration Agent for the country to which the emigrants are to be conveyed, certificates, signed by the Protector and Emigration Agent, respectively, to the effect that the Protector and Agent have, in respect of all the emigrants embarking at that port in the vessel, done all that is required by the foregoing provisions of this Act, or by the rules made under this Act, to be done on the part of the Protector and Agent, respectively, and that all the directions for the security, well-being and protection of emigrants which are contained in this Act or in the rules made under this Act have, in the case of that vessel, been complied with

Certificates from Protector of Emigrants and Emigration Agent

72. The master of every emigrant-vessel shall keep on board the vessel during the whole voyage two copies of this Act, and of all rules made under this Act, and two copies of a translation of this Act, and of those rules, in such language or languages as the Local Government directs, and shall, on request made at any reasonable time, produce one of those copies to any emigrant for his perusal.

Copies of Act and rules to be kept on board

73. For each emigrant who embarks on board an emigrant-vessel the Emigration Agent shall pay to the Protector of Emigrants a fee of such amount as the Governor General in Council, from time to time, by notification in the Gazette of India, prescribes.<sup>1</sup>

Fee for each emigrant embarked.

Provided as follows:—

- (a) the fee payable under this section shall not be more than is, in the opinion of the Governor General in Council, sufficient to raise the total income from fees under this Act to an amount which will cover the cost of any establishment or supervision which the Governor General in Council thinks necessary to provide for the control of emigration;
- (b) if it appears to the Governor General in Council expedient to provide, in the case of any country, any special establishment or expenditure for the protection of Indian emigrants to that country, the Governor General in Council may increase the fee payable in the case of emigrants to that country to an amount

<sup>1</sup> See second foot note on p 678, *supra*

## (Chapter X.—Embarkation and Departure. Secs. 74-79.)

sufficient, in his opinion, to cover the cost of the special establishment or expenditure

Duty of master to see to observance of Act and rules on board his vessel.

74. It shall be the duty of every master licensed under this Act to see that all the provisions of this Act and the rules made under this Act are observed on board his vessel during the voyage from British India to the country to which the emigrants are to be conveyed.

Return of pass to emigrant.

75. The master shall return his pass to each emigrant before he disembarks in the country to which he has agreed to emigrate.

*Special Provisions as to Vessels sailing from Calcutta.*

Emigrant-vessel sailing from Calcutta to depart within twenty-four hours of embarkation  
Emigrant-vessel sailing from Calcutta to be towed to sea.

76. The master of every vessel carrying emigrants from the port of Calcutta shall proceed on his voyage and depart with his vessel from Garden Reach within twenty-four hours after the embarkation of such of the emigrants as have first embarked.

77. Every sailing-vessel leaving the port of Calcutta with emigrants shall proceed from Garden Reach to sea under tow of a steamer declared to be competent by such officer as the Local Government appoints in this behalf.

Power of surgeon of emigrant-vessel leaving Calcutta to require sick emigrants to be sent to hospital.

78. (1) When an emigrant-vessel leaves the port of Calcutta, if during her passage down the river, and while between Garden Reach and Diamond Harbour, the disease of measles, scarlet-fever or small-pox appears on board, the master shall, if so required by the surgeon in charge of the emigrants, send to the hospital at Diamond Harbour all emigrants suffering from the disease, with any emigrants registered as their dependents, and any emigrant who, not being a dependent, is the father, mother, wife, husband, son, daughter, brother, sister, guardian or ward of any such emigrant and who wishes to accompany him or her, and shall at once inform the Protector of Emigrants at Calcutta of the number and names of the emigrants so sent to hospital.

(2) The provisions of sections 50, 51 and 53 shall, so far as may be, apply to emigrants landed under this section, and to the recovery of expenses incurred in respect of them.

Power of surgeon of emigrant-vessel leaving Calcutta to require all emigrants to be landed when cholera appears.

79. (1) In the event of cholera in an epidemic form appearing among the emigrants on board any such vessel carrying emigrants from the port of Calcutta, the surgeon in charge of the emigrants may require the master to land all the emigrants on board the vessel at Diamond Harbour.

(2) The master shall at once comply with the request of the surgeon, and shall immediately give notice of his having done so to the Protector of

Emigrants at Calcutta, who shall take such action thereon as the Governor General in Council, from time to time, by rules made under this Act, prescribes.

## CHAPTER XI.

### RULES.

80. (1) The Governor General in Council may, from time to time, make rules<sup>1</sup> consistent with this Act—

Power for  
Governor  
General in  
Council to  
make rules.

- (a) to provide for the supervision and regulation of places of accommodation provided under this Act, and to define the classes of Magistrates and the officers of Police to be authorized to visit and inspect those places;
- (b) to prescribe the form of the register required under this Act, and the particulars to be entered therein, and to regulate the control to be exercised over Registering Officers by the District Magistrate or officer (if any) appointed in this behalf under this Act;
- (c) to prescribe the forms of the agreements to be made under this Act, and the particulars to be contained therein, and the language or languages in which agreements must be expressed;
- (d) to prescribe the conditions on which licenses for the establishment of depôts under this Act may be given, to provide for the supervision and regulation of depôts, and for the medical care of the emigrants during their residence there, and the measures to be taken on the outbreak of any epidemic or infectious disease there,
- (e) to prescribe the forms to be supplied by Emigration Agents and recruiters for the purposes of this Act,
- (f) to prescribe the particulars which the owner or master of a vessel applying for a license to carry emigrants in his vessel must state,
- (g) to regulate the proportion of women to be ordinarily carried in any emigrant-vessel with male emigrants, and to prescribe the

<sup>1</sup> For rules issued under this section, see Notification No 94E, dated the 18th March, 1886, Gazette of India, 1886, Pt I, p 161. These rules have been amended and added to from time to time, but the amendments and additions are too numerous to be given here

*(Chapter XI.—Rules. Sec. 80.)*

arrangements to be made for the separation of women (married or single) and children from the other emigrants on board an emigrant-vessel;

- (h) to prescribe the description, quantity and quality of provisions, fuel and water to be taken by emigrant-vessels, the daily allowance of food and water to be issued, and the nature and amount of clothing to be supplied to each emigrant during the voyage;
- (i) to fix the number of the compounders, interpreters and attendants subordinate to the surgeon to be carried for the care of the sick or weakly on board each emigrant-vessel;
- (j) to prescribe the nature, quantity and quality of medicines and other stores to be carried on board emigrant-vessels;
- (k) to provide for the ventilation and cleanliness of every emigrant-vessel during a voyage, and for its being furnished with a sufficient number of life-buoys, boats, water-buckets and other appliances to be used in case of shipwreck or fire;
- (l) to prescribe the seasons at which alone emigrant-vessels or specified classes of emigrant-vessels may sail from any port in British India to any country west of the Cape of Good Hope to which emigration is for the time being lawful;
- (m) to provide for the disposal of emigrants who may be landed under section 79;
- (n) to provide for the medical care of the emigrants on the voyage, and to provide for the measures to be taken on the outbreak of any epidemic or infectious disease on a voyage;
- (o) to provide for a journal being kept by the surgeon of every emigrant-vessel, recording the health of the emigrants, and his treatment of the sick, with full explanation of the causes of every death; and to define the duties and powers of the surgeon in respect of the emigrants committed to his care;
- (p) to define and regulate the powers and duties of the several officers appointed by the Government under this Act; and
- (q) generally to provide for the security, well-being and protection of emigrants.

Provided that the Local Government may, in special cases, notwithstanding anything contained in rules made under clause (q) of this section, permit an emigrant-vessel to sail, though it does not carry the proportion of women required to be carried in ordinary cases.

(Chapter XI.—Rules. Sec. 81. Chapter XII.—Offences. Sec. 82.)

(2) The power to make rules conferred by this section may be exercised at any time after the passing of this Act, but any rule made under this section shall not take effect until the Act comes into force.

81. (1) The Governor General in Council shall, before making rules under the last foregoing section, publish a draft of the proposed rules in such manner as may, in his opinion, be sufficient for the information of persons likely to be affected thereby. Publication  
of drafts and  
rules

(2) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(3) The Governor General in Council shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(4) Every rule made under the last foregoing section shall be published in the Gazette of India, and the publication in the Gazette of India of a rule purporting to be made under that section shall be conclusive evidence that it has been duly made.

## CHAPTER XII.

### OFFENCES.

82. (1) Whoever, except in conformity with the provisions of this Act or of the rules made under this Act,— Unlawful  
recruiting

(a) makes, or attempts to make, any agreement with any Native of India, purporting to bind him to emigrate, or

(b) in consideration of any hire or reward, induces, or attempts to induce, any Native of India to leave any place for the purpose of emigrating, or otherwise acts or is employed as a recruiter of emigrants, or

(c) in consideration of any hire or reward, receives into or detains in any place, or, being a recruiter, in any place other than a place in which accommodation has been provided in accordance with this Act or the rules made under this Act, any person with a view to his being registered as an emigrant, or after his registration as an emigrant and before his departure for the depôt at the port of embarkation,

shall be punished with fine which may extend to five hundred rupees.

(2) If any person, other than a recruiter licensed under this Act, commits an offence under this section, any Police-officer may arrest him without warrant.

Recruiters  
removing  
unregistered  
emigrants to  
depôt.

83. Whoever, being a recruiter licensed under this Act,—

- (a) removes, or attempts to remove, any intending emigrant to a depôt before he has been registered under this Act as an emigrant, or induces, or attempts to induce, him to leave the local limits of the jurisdiction of the Magistrate by whom the recruiter's license has been countersigned before he has been so registered, or aids, or attempts to aid, him in leaving any such local limits or going to any depôt before he has been so registered, or
- (b) fails to give a true copy of the statement with which he is provided under section 26 to any person whom he invites to emigrate, or
- (c) fails to provide any emigrant whom he has engaged, and who has been registered at a place beyond the limits of the port of embarkation, with suitable lodging and food, or otherwise ill-treats any emigrant on his journey to the depôt,

shall be punished with fine which may extend to five hundred rupees.

Fraudulently  
inducing Na-  
tive to emi-  
grate.

84. Whoever, by means of intoxication, coercion or fraud, causes or induces, or attempts to cause or induce, any Native of India to emigrate, or to enter into any agreement to emigrate, or to leave any place with a view to emigrating, shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

False repre-  
sentation of  
Government  
authority.

85. Whoever, without lawful authority, issues any written order to the Police to assist himself or any other person to procure emigrants, or falsely represents that any emigrants are required by the Government, or are to be engaged on behalf of the Government, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Receiving  
emigrants on  
board vessel  
in contraven-  
tion of Act.

86. If any master of a vessel—

- (a) knowingly receives on board his vessel any emigrant who has not complied with the provisions of this Act or the rules made under this Act, so far as they are binding on him, or,
- (b) not being licensed under this Act, knowingly receives any emigrant on board his vessel, or
- (c) being licensed under this Act, knowingly receives on board his vessel any emigrant in excess of the number specified in his license,

he shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees for each

emigrant so received, or with both; and the vessel, her tackle, apparel and furniture, may be declared by the Court before which the master is tried, to be forfeited to Her Majesty

87. If any master licensed under this Act fraudulently does, or suffers to be done, any act or thing whereby the license becomes inapplicable to the altered state of the vessel or other matter to which the license relates, he shall be punished with fine which may extend to five thousand rupees,

Fraudulent acts on part of master.

and he may also be sued on any bond which he may have executed under section 62.

88. If any master of an emigrant-vessel clears, or attempts to clear his vessel outwards when any of the provisions of section 57, 59 or 60 have not been complied with in respect of his vessel, he shall be punished with fine which may extend to four thousand rupees.

Clearance without compliance with Act

89. If any master receives on board his vessel any emigrants and fails to comply with the requirements of sections 66, 67 and 68 in respect of those emigrants, he shall be punished with fine which may extend to two hundred rupees for each emigrant so received on board

Failure of master to comply with provisions as to lists and passes

90. If any master, having cleared his vessel, takes on board any emigrant not entered in the list mentioned in section 66 or not furnished with a pass required by that section, he shall be punished with fine which may extend to two hundred rupees for each emigrant so taken

Master taking on board, after clearance, emigrants not entered in list

91. If any master lands any emigrant in any country other than the country for which he has been shipped by the Emigration Agent, he shall be punished for every emigrant so landed with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to one month, or with both, unless the landing has been caused by stress of weather or unavoidable accident, or has taken place under the provisions of section 78 or 79

Master landing emigrant at other than specified country.

92. If any master of a sailing-vessel leaving the port of Calcutta with emigrants on board—

Failure to comply with provisions as to leaving Calcutta

(a) does not leave Garden Reach with his vessel within the time prescribed in section 76, or

(b) without reasonable excuse, causes or allows his vessel to go below Garden Reach without being in tow of such a steamer as is referred to in section 77,

he shall be punished with fine which may extend to one thousand rupees.

93. (1) If any emigrant deserts before arrival at depôt, or refuses without reasonable cause to proceed to the depôt, he shall be punished with fine

Emigrant deserting or refusing to

proceed to  
depôt.

which may extend to twenty rupees, or to the cost incurred in entering into an agreement with, registering and conveying him to the dépôt, whichever is greater, and, in default of payment of the fine, with imprisonment which may extend to one month.

(2) Any fine levied under this section may, in the discretion of the convicting Magistrate, be paid to the Emigration Agent or recruiter by whom the cost was incurred.

Emigrant  
deserting  
from dépôt  
or failing to  
embark.

94. (1) If any emigrant—

(a) deserts from the dépôt, or

(b) without reasonable cause, refuses or neglects to embark when called upon to do so by the Emigration Agent,

he shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or to double the amount of the cost incurred in entering into an agreement with, registering and conveying him to the dépôt, and maintaining him therein, or with both.

(2) Any fine levied under this section may, in the discretion of the convicting Magistrate, be paid to the Emigration Agent or recruiter by whom the cost was incurred.

Causing or  
permitting,  
embarkation  
of emigrant  
in contraven-  
tion of sec-  
tion 63.

95. If any person causes, or if any master knowingly permits, any emigrant to embark contrary to the provisions of section 63, he shall be punished with fine which may extend to two hundred rupees for each emigrant so embarked.

Institution  
of prosecu-  
tions.

96. (1) Prosecutions under sections 86 to 95 (both inclusive) shall not be instituted except as follows, namely:—

(a) prosecutions under sections 86 to 92, both inclusive, by the Emigration Agent, or by the Protector of Emigrants, or by an officer appointed for the purpose by the Local Government;

(b) prosecutions under section 93, by or with the sanction of a Magistrate or Registering Officer or of the Protector of Emigrants at the port of embarkation;

(c) prosecutions under section 94, by the Emigration Agent with the sanction of the Protector;

(d) prosecutions under section 95, by the Protector of Emigrants or by an officer appointed for the purpose by the Local Government.

(Chapter XII.—Offences. Secs. 97-98. Chapter XIII.—Supplemental.  
Secs. 99-101.)

97. The following shall be good defences to charges under section 93 and 94, respectively, namely:—

Defence to charges of desertion.

(a) to a charge under section 93, that the accused person or other emigrants accompanying him has or have been ill-treated, deceived or defrauded by the recruiter or any person under his control;

(b) to a charge under section 94, that the emigrant has suffered any ill-treatment or neglect in the dépôt or on the journey thither.

98. All the powers for the time being conferred by law<sup>1</sup> on officers of sea-customs with regard to the searching and detention of vessels, or otherwise for the prevention of smuggling on board thereof, may be exercised by those officers for the prevention of offences against this Act.

Power for Customs-officers to search and detain for purposes of Act.

### CHAPTER XIII.

#### SUPPLEMENTAL.

99. The Local Government may, from time to time, appoint any person, by name or by virtue of his office, to perform within a specified local area the functions of a Magistrate under this Act.

Power for Local Government to appoint Magistrates for purposes of Act  
Suits against Emigration Agent for breach of duty.

100. (1) Whenever an Emigration Agent is chargeable with a breach of any duty to an emigrant arising from any agreement with the emigrant or imposed by this Act or the rules made under this Act, the Protector of Emigrants may, if he thinks fit, institute a suit on behalf of the emigrant against the Emigration Agent for the recovery of compensation for the breach.

(2) In awarding compensation under this section all sums ordered to be paid under section 50 or section 52 shall be taken into consideration.

101. (1) The Governor General in Council may, from time to time, by notification in the Gazette of India, determine what shall be held to be, for the purposes of this Act, the probable length of the voyages by sailing-vessels and vessels using steam-power, respectively, from any port from which, to any country to which, emigration is for the time being lawful.

Power for Governor General in Council to determine probable lengths of voyages for purposes of Act.

(2) Until otherwise determined under this section, the probable length of the voyage by sailing-vessels from the ports mentioned in the third

<sup>1</sup> See Ch XVII of the Sea Customs Act, 1878 (VIII of 1878), printed, General Acts, Vol. III, Ed 1898, p 230.

schedule hereto annexed, to the countries mentioned in that schedule, shall be deemed to be the lengths stated in that schedule.

Provision  
supplement-  
ary to sec-  
tion 6 (1) of  
this Act.

<sup>1</sup> 102. (1) On and from such a date as the Governor General in Council may, by notification in the Gazette of India, fix in this behalf with respect to any protected Native State adjoining the Straits Settlements,<sup>2</sup> or with respect to any <sup>3</sup>[country] for labour in which Natives of India are recruited exclusively through the agency of the Government of the Straits Settlements, a Native of India who departs by sea out of British India under an agreement to labour for hire in any such <sup>4</sup>[State or country] shall not, so long as the notification continues to apply to the <sup>4</sup>[State or country], be deemed to emigrate within the meaning of this Act

(2) The Governor General in Council may, by notification in the Gazette of India, declare that from a date to be specified, a notification under subsection (1) shall no longer apply to a Native State or <sup>3</sup>[country] therein mentioned.

Application  
of Act to  
emigration  
from British  
ports to  
French and  
Dutch colo-  
nies.

103. The provisions of this Act shall apply to emigration from British Indian ports—

- (a) to the French colonies, under the terms of the Convention executed at Paris on the first day of July, 1861, and ratified at the same place on the thirtieth day of July, 1861, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and His Majesty the Emperor of the French; and
- (b) to the Netherlands colony, of Dutch Guiana under the terms of the Convention executed at the Hague on the eighth day of September, 1870, and ratified at the same place on the seventeenth day of February, 1872, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and His Majesty the King of the Netherlands:

<sup>1</sup> This section was enacted in substitution for the original s 102 (as amended by Act XXI of 1884), by the Indian Emigration Act (1883) Amendment Act, 1890 (XVIII of 1890), s 7, printed, General Acts, Vol V. For saving of notifications, *see ibid*, s 8, printed, General Acts, Vol V, Ed 1898, p 460

<sup>2</sup> A Native of India departing by sea under an agreement to labour for hire in (1) the Protected Native States of Perak, Selangor, Sungai, Ujong and Johore, (2) the Protected Native States of Negri, Sembilan and Pahang, (3) from Negapatam to British North Borneo or Labuan, and (4) from Negapatam to the State of Sarawak, has been declared not to emigrate within the meaning of the Act, *see* Notifications Nos 119-2, 27E, 154-15-9-E, Nos 1153-5-13-E and 411-46-10-E, dated, respectively, 1st April, 1886, 27th September, 1889, 11th June, 1891, and 25th March, 1897, Gazette of India, 1886, 1889, 1891 and 1897, Pt I, pp 277, 526, 320 and 239, respectively

<sup>3</sup> The word "country" was substituted for the words "British Colony or possession" by the Indian Emigration Act Amendment Act, 1897 (VII of 1897), printed, General Acts, Vol VI, Ed 1898

<sup>4</sup> The words "State or country" were substituted for the words "State, colony or possession" by the Indian Emigration Act Amendment Act, 1897 (VII of 1897), s 2

## (Chapter XIII.—Supplemental. Secs. 104-106.)

Provided that, in any case in which there is any conflict between the provisions of this Act and those contained in either of those Conventions, the latter shall prevail.

104. The provisions of this Act shall, so far as they relate to proceedings which are to be conducted in British India, apply, in the case of Natives of India who depart by sea from a French port in India under an agreement to labour for hire in a French colony, under the Convention between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and His Majesty the Emperor of the French referred to in the last foregoing section, as if such Natives were emigrants within the meaning of this Act:

Application of Act to proceedings in British India connected with emigration from French ports in India to French colonies.

Provided that, in any case in which there is any conflict between the provisions of this Act and those contained in that Convention, the latter shall prevail.

105. (1) The departure by land out of British India of a Native of India <sup>1</sup> [under, or with a view to entering into, an agreement] to labour for hire in some country beyond the sea other than the Island of Ceylon or the Straits Settlements is prohibited:

Prohibition of departure by land of a Native of India under an agreement to labour for hire in some country beyond the sea.

Provided that nothing in this section applies to the departure by land—

(a) of a domestic servant when accompanying his employer;

(b) of a Native of India for the purpose of departing by sea from a French port in India under an agreement to labour for hire in a French colony in accordance with the Convention referred to in <sup>2</sup> [section 103, clause (a) and section 104]

(2) Whoever induces, or attempts to induce, any Native of India to depart by land out of British India in contravention of this section shall be deemed to have committed an offence under section 82.

<sup>3</sup> 106. The Governor General in Council may, from time to time, by notification in the Gazette of India, declare that all or any of the provisions of this Act or the rules thereunder shall not apply, or shall apply subject to such conditions, modifications or restrictions as to the Governor General in Council may seem expedient, in the case of Natives of India departing out

Power to declare whole or part of Act and rules inapplicable to Natives of India engaged for Her Majesty's

<sup>1</sup> The words "under, or with a view to entering into, an agreement" were substituted for the words "under a contract" by the Indian Emigration Act (1883) Amendment Act, 1896 (I of 1896), s. 1, printed, General Acts, Vol. VI

<sup>2</sup> The words and figures "section 103, clause (a), and section 104" were substituted for the word and figures "section 102" by the Indian Emigration Act (1883) Amendment Act, 1890 (XVIII of 1890), s. 9, printed, General Acts, Vol. V, p. 460

<sup>3</sup> S. 106 was added by the Indian Emigration Act (1883) Amendment Act, 1896 (I of 1896), s. 2, printed, General Acts, Vol. VI.

(Schedule I.—Countries to which Emigration is lawful. Schedule II.—  
Form of Recruiter's License.)

Government  
to labour for  
hire in any  
country be-  
yond the sea

of British India under an agreement made with, or on behalf of, Her Majesty's Government to labour for hire in any country beyond the sea <sup>1</sup>

Provided that no notification under this section shall be issued unless the Governor General in Council is first satisfied that the fair treatment of Natives of India so departing out of British India has, by rules or otherwise, duly been secured.

#### SCHEDULE I.

(See section 8.)

##### COUNTRIES TO WHICH EMIGRATION IS LAWFUL.

- I.—The British Colonies of Mauritius, Jamaica, British Guiana, Trinidad, St Lucia, Grenada, St. Vincent, Natal, St. Kitts, Nevis and Fiji.
- II.—The French colonies of Martinique, Guadeloupe and its dependencies, and Guiana.<sup>2</sup>
- III.—The Netherlands colony of Dutch Guiana.
- IV.—The Danish colony of St. Croix.

#### SCHEDULE II.

(See section 21.)

##### FORM OF RECRUITER'S LICENSE.

OFFICE of the Protector of Emigrants at the Port of

A. B., described in the descriptive roll annexed, is hereby licensed under the Indian Emigration Act, 1883, to be a recruiter of emigrants for [*here state the country for which the recruiter is licensed to recruit*] in [*here specify the local area within which the recruiter is licensed to recruit.*]

This license will be in force until the \_\_\_\_\_ of \_\_\_\_\_, unless previously cancelled.

(Signed) C. D.,  
Protector of Emigrants.

Dated the \_\_\_\_\_ day of \_\_\_\_\_.

<sup>1</sup> The provisions of the Act have, under this section, been declared not to apply to labourers engaged in connection with the railway from Mombassa to Victoria Nyanza, see Notifications Nos 93—2-10 and 569—2-15, dated, respectively, the 17th January, and the 18th April, 1896, Gazette of India, 1896, Pt I, pp 34 & 274, respectively

<sup>2</sup> Emigration to these French colonies has been prohibited, see foot-note to s. 9 on page 670, *supra*.

(Schedule II.—Form of Recruiter's License.)

SCHEDULE II—*concl'd.*

FORM OF RECRUITER'S LICENSE—*concl'd.*

*Descriptive Roll.*

[illegible]

(Schedule III.—Probable Lengths of Voyage under this Act)

### SCHEDULE III.

(See section 101)

#### PROBABLE LENGTHS OF VOYAGE<sup>1</sup> UNDER THIS ACT.

##### FROM CALCUTTA—

To Mauritius . . . . .	{	From the month of April to the month of October, both inclusive, ten weeks; and from the month of November to the month of March, both inclusive, eight weeks.
To Jamaica, British Guiana, Trinidad, St. Lucia, Grenada, St. Vincent, St. Kitts, Nevis, St. Croix, French Guiana, Martinique, Guadeloupe and its dependencies, and Dutch Guiana.	}	Twenty weeks.
To Natal . . . . .		Twelve weeks.
To Fiji . . . . .		Eighteen weeks.

##### FROM MADRAS—

To Mauritius . . . . .	{	From the month of April to the month of October, both inclusive, seven weeks; and from the month of November to the month of March, both inclusive, six weeks.
To Jamaica, British Guiana, Trinidad, St. Lucia, Grenada, St. Vincent, St. Kitts, Nevis, St. Croix, French Guiana, Martinique, Guadeloupe and its dependencies, and Dutch Guiana.	}	Nineteen weeks.
To Natal . . . . .		Ten weeks.
To Fiji . . . . .		Seventeen weeks.

<sup>1</sup> By sailing-vessel, see s 101 (2) *supra*, p 695.

FROM BOMBAY—

To Mauritius . . . . .	{ From the month of April to the month of September, both inclusive, five weeks, and from the month of October to the month of March, both inclusive, six weeks.
To Jamaica, British Guiana, Trinidad, St. Lucia, Grenada, St. Vincent, St. Kitts, Nevis, St. Croix, French Guiana, Martinique, Guadeloupe and its dependencies, and Dutch Guiana. }	Nineteen weeks.
To Natal . . . . .	Ten weeks
To Fiji . . . . .	Seventeen weeks.

ACT No. I of 1884<sup>1</sup>

[4th January, 1884.]

## An Act to amend the law relating to the granting of honorary degrees by the Universities at Calcutta, Madras and Bombay.

WHEREAS it is expedient to amend the law relating to the granting of honorary degrees, and to give to the Universities at Calcutta, Madras and Bombay the power of granting the degree of Doctor in the faculty of Law to persons who have not undergone a previous examination;

and whereas the executive government of each of the said Universities is, by bye-laws made under the Acts establishing the same,<sup>2</sup> vested in a Syndicate consisting of the Vice-Chancellor and certain of the Fellows;

It is hereby enacted as follows:—

1. [*Repeal of Act XXI of 1875*] *Rep by Act XII of 1891*<sup>3</sup>

2. If the Vice-Chancellor and not less than two-thirds of the other members of the Syndicate of any of the Universities at Calcutta, Madras and Bombay recommend that an honorary degree be conferred on any person, on the ground that he is, in their opinion, by reason of eminent

Power to confer honorary degree of Doctor in the faculty of Law.

<sup>1</sup> For the Statement of Objects and Reasons, see Gazette of India, 1884, Pt V, p 2; for Proceedings in Council, see *ibid*, 1883, Supplement, pp 209 and 1518, and *ibid*, 1884, Supplement, p 40

Short title, "The Indian Universities (Honorary Degrees) Act 1884," see the Indian Short Titles Act, 1897 (XIV of 1897), printed, General Acts, Vol VI

<sup>2</sup> See Acts II of 1857, XXII of 1857 and XXVII of 1857, printed, General Acts, Vol I, pp 114, 123 and 134, respectively

<sup>3</sup> Printed, General Acts, Vol VI.

position and attainments, a fit and proper person to receive such a degree, and their recommendation is supported by a majority of those present at a meeting of the Senate and is confirmed by the Chancellor, it shall be lawful for the Chancellor, Vice-Chancellor and Fellows to confer on that person the degree of Doctor in the faculty of Law, without requiring him to undergo any examination.

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## THE INDIAN EXPLOSIVES ACT, 1884.

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### CONTENTS.

#### SECTIONS.

1. Short title.  
Local extent.
2. Commencement.
3. [*Repealed*]
4. Definitions.
5. Power to make rules as to licensing of the manufacture, possession, use, sale, transport and importation of explosives
6. Power for Governor General in Council to prohibit the manufacture, possession or importation of specially dangerous explosives.
7. Power to make rules conferring powers of inspection, search, seizure, detention and removal.
8. Notice of accidents.
9. Inquiry into accidents.
10. Forfeiture of explosives.
11. Distress of vessel.
12. Abetment and attempts.
13. Power to arrest without warrant persons committing dangerous offences.
14. Saving for manufacture, possession, use, sale, transport or importation by Government
15. Saving of Indian Arms Act, 1878.
16. Saving as to liability under other law.
17. Extension of definition of "explosive" to other explosive substances.
18. Procedure for making, publication and confirmation of rules.

ACT No. IV OF 1884.<sup>1</sup>

[26th February, 1884.]

## An Act to regulate the manufacture, possession, use, sale, transport and importation of Explosives.

WHEREAS it is expedient to regulate the manufacture, possession, use, sale, transport and importation of explosives; It is hereby enacted as follows :—

- |   |               |
|---|---------------|
| 1. (1) This Act may be called the Indian Explosives Act, 1884; and  | Short title.  |
| (2) It extends to the whole of British India.   | Local extent. |
| 2. This Act shall come into force on such day <sup>2</sup> as the Governor General in Council, by notification in the Gazette of India, appoints.   | Commencement  |
| * * * * *   |               |
| 3. <sup>1</sup> [Repeal of portions of Act XII of 1875] Rep. by Indian Ports Act, 1889 (X of 1889). <sup>4</sup>  |               |
| 4. In this Act, unless there is something repugnant in the subject or context,—   | Definitions.  |
| (1) “explosive”—  |               |
| (a) means gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or of other metals, coloured fires and every other substance, whether similar to those above mentioned or not, used or manufactured with a view to produce a practical effect by explosion, or a pyrotechnic effect; and |               |
| (b) includes fog-signals, fireworks, fuzes, rockets, percussion-caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined.   |               |

<sup>1</sup> For the Statement of Objects and Reasons, see Gazette of India, 1883, Pt V, p 22; for Proceedings in Council, see *ibid.*, 1882, Supplement, p 1856, and *ibid.*, 1883, Supplement, p 43, and *ibid.*, 1884, Supplement, p 377

This Act has been declared, under s 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol I, Ed 1898, p 467, to be in force in the districts of Hazáribágh, Lohardága, Palamau and Mámbhum and in Pargana Dhálbhum and the Kolhán in the Singbhum District of the Chota Nagpur Division, see Gazette of India, 1896, Pt I, p 972; it has been applied to the Santhál Parganas under s 3 of the Santhál Parganas Settlement Regulation (III of 1872), as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886), see Calcutta Gazette, 1891, Pt I, p 222 For Regulation III of 1872, see Bengal Code, Ed 1889, Vol I, p 597

The Act has been declared in force in Upper Burma (except the Shan States), by the Burma Laws Act, 1898 (XIII of 1898) It had been previously extended there under s 5 of Act XIV of 1874, see Gazette of India, 1888, Pt I, p 539, and was declared to come into force on 19th February, 1889, see Burma Rules Manual, Ed 1897, p 126

<sup>2</sup> The 1st July, 1887, see Gazette of India, 1887, Pt I, p 307

<sup>3</sup> Sub-section (2) was repealed by the Repealing and Amending Act, 1891 (XII of 1891), see General Acts, Vol VI

<sup>4</sup> Printed, General Acts, Vol V, Ed 1898, p 297

## (Sec. 5.)

(2) "manufacture" includes the process of dividing into its component parts, or otherwise breaking up or unmaking, any explosive, or making fit for use any damaged explosive, and the process of re-making, altering or repairing any explosive:

(3) "vessel" includes every ship, boat and other vessel used in navigation, whether propelled by oars or otherwise:

(4) "carriage" includes any carriage, wagon, cart, truck, vehicle or other means of conveying goods or passengers by land, in whatever manner the same may be propelled:

(5) "master" includes every person (except a pilot or harbour-master) having for the time being command or charge of a vessel: provided that, in reference to any boat belonging to a ship, "master" shall mean the master of the ship:

(6) "import" means to bring into British India by sea or land.

Power to make rules as to licensing of the manufacture, possession, use, sale, transport and importation of explosives.

5. (1) The Governor General in Council may for any part of British India, and each Local Government, with the previous sanction of the Governor General in Council, may for any part of the territories under its administration, make rules<sup>1</sup> consistent with this Act to regulate or prohibit, except under and in accordance with the conditions of a license granted as provided by those rules, the manufacture, possession, use, sale, transport and importation of explosives, or any specified class of explosives.

(2) Rules under this section may provide for all or any of the following, among other matters, that is to say:—

(a) the authority by which licenses may be granted;

<sup>1</sup> (1) For rules made by the Governor General in Council under this section to regulate the transport and importation of explosives, see Gazette of India, 1897, Pt I, p 603. For rules made with reference to Rule 14 of these rules as to the test which certain explosives shall be required to pass before importation, see Gazette of India, 1897, Pt. I, p. 618.

(2) For rules as to the transport of explosives in—

(a) the Port of Bombay, see Bombay Government Gazette, 1898, Pt I, p 2009;  
(b) the Port of Aden, see Bombay List of Local Rules and Orders, Ed 1896, Vol I, pp 446 & 448;  
(c) the Port of Karachi, see *ibid*, pp 443-445;  
(d) the Port of Madras, see Madras List of Local Rules and Orders, Ed 1898, Vol I, p 214

(3) For rules to regulate the manufacture, possession and sale of explosives made under this section for—

(a) Assam, see Assam Gazette, 1897, Pt II, p 625, and 1898, Pt II, pp 1049 and 1057;  
(b) Bengal, see Calcutta Gazette, 1897, Pt I, p 1322, and *ibid*, 1898, Pt I, p 1080;  
(c) Bombay, see Bombay Government Gazette, 1897, Pt I, p 1365 and *ibid*, 1898, Pt I, p 300;  
(d) Burma, see Burma Gazette, 1897, Pt I, p 385;  
(e) Central Provinces, see Central Provinces Gazette, 1897, Pt III, pp 217 and 289;  
(f) Coorg, see Coorg District Gazette, 1898, Pt I, p 84;  
(g) Madras, see Fort St George Gazette, 1897, Pt I, pp 1006 & 1018, and *ibid*, 1898, p 958;  
(h) North-Western Provinces and Oudh, see North-Western Provinces and Oudh List of Local Rules and Orders, Ed 1894, p 119

- (b) the fees to be charged for licenses and the other sums (if any) to be paid for expenses by applicants for licenses;<sup>1</sup>
- (c) the manner in which applications for licenses must be made, and the matters to be specified in such applications,
- (d) the form in which, and the conditions on and subject to which, licenses must be granted,
- (e) the period for which licenses are to remain in force; and
- (f) the exemption absolutely or subject to conditions of any explosives from the operation of the rules

(3) The authority making rules under this section may by the rules impose penalties on all persons manufacturing, possessing, using, selling, transporting or importing explosives in breach of the rules, or otherwise contravening the rules.

Provided that the maximum penalty which may be imposed by any such rules shall not exceed—

- (a) in the case of a person so importing or manufacturing an explosive, a fine which may extend to three thousand rupees;
- (b) in the case of a person so possessing, using or transporting an explosive, a fine which may extend to one thousand rupees;
- (c) in the case of a person so selling an explosive, a fine which may extend to five hundred rupees, and
- (d) in any other case, two hundred rupees.

6. (1) Notwithstanding anything in the rules under the last foregoing section, the Governor General in Council may, from time to time, by notification in the Gazette of India,—

- (a) prohibit, either absolutely or subject to conditions, the manufacture, possession or importation of any explosive which is of so dangerous a character that, in the opinion of the Governor General in Council, it is expedient for the public safety to issue the notification; and
- (b) cancel any notification under this section

(2) The officers of sea customs at every port shall have the same power in respect of any explosive with regard to the importation of which a notification has been issued under this section and the vessel containing the explosive as they have for the time being in respect of any article the importation

Power for Governor General in Council to prohibit the manufacture, possession or importation of specially dangerous explosives.

<sup>1</sup> For notification as to fee to be charged under this clause in the Presidency of Bombay, see Bombay List of Local Rules and Orders, Ed 1896, Vol I, p 448

For notification declaring that no fee shall be charged for licenses to possess explosives in reasonable quantities for blasting, see Gazette of India, 1893, Pt I, p 211

of which is prohibited or regulated by the law relating to sea customs<sup>1</sup> and the vessel containing the same; and the enactments for the time being in force relating to sea customs or any such article or vessel shall apply accordingly.

(3) Any person manufacturing, possessing or importing an explosive in contravention of a notification issued under this section shall be punished with fine which may extend to three thousand rupees, and, in the case of importation by water, the owner and master of the vessel in which the explosive is imported shall, in the absence of reasonable excuse, each be punished with fine which may extend to three thousand rupees.

Power to  
make rules  
conferring  
powers of  
inspection,  
search,  
seizure,  
detention and  
removal.

7. (1) The Governor General in Council, or the Local Government with the previous sanction of the Governor General in Council, may make rules<sup>2</sup> consistent with this Act authorizing any officer, either by name or in virtue of his office—

(a) to enter, inspect and examine any place, carriage or vessel in which an explosive is being manufactured, possessed, used, sold, transported or imported under a license granted under this Act, or in which he has reason to believe that an explosive has been or is being manufactured, possessed, used, sold, transported or imported in contravention of this Act or of the rules made under this Act;

(b)<sup>3</sup> to search for explosives therein;

(c) to take samples of any explosive found therein on payment of the value thereof; and

(d)<sup>3</sup> to seize, detain, remove and, if necessary, destroy any explosive found therein.

(2) The provisions of the<sup>4</sup> Code of Criminal Procedure relating to searches under this Code shall, so far as the same are applicable, apply to searches by officers authorized by rules under this section.

Notice of  
accidents.

8. Whenever there occurs in or about, or in connection with, any place in which an explosive is manufactured, possessed or used, or any carriage or vessel either conveying an explosive or on or from which an explosive is being loaded or unloaded, any accident by explosion or by fire attended with loss of human life or serious injury to person or property, or of a des-

<sup>1</sup> See Ch IV of the Sea Customs Act, 1878 (VIII of 1878), printed, General Acts, Vol. III, Ed 1898, p 168

<sup>2</sup> For rules appointing officers or giving power to appoint officers for the purposes of this section, see Gazette of India, 1898, Pt I, p 603

<sup>3</sup> For rules made under these clauses for Bombay, see Bombay List of Local Rules and Orders, Ed 1896, Vol I, p 448

<sup>4</sup> See now Act V of 1898, Ch VII.

cription usually attended with such loss or injury, the occupier of the place, or the master of the vessel, or the person in charge of the carriage, as the case may be, shall forthwith give notice thereof to the officer in charge of the nearest police-station.

9. (1) Whenever, in the opinion of a District Magistrate, Sub-divisional Magistrate or any other Magistrate specially empowered by the Local Government in this behalf, an inquiry is necessary into the cause of any accident of the description mentioned in section 8, he may either himself make the inquiry or direct a Magistrate subordinate to himself to make the inquiry.

Inquiry into  
accidents

(2) Any Magistrate making an inquiry under this section shall, for the purposes of conducting the inquiry, have all the powers which he would have in holding an inquiry into an offence under the Code of Criminal Procedure.<sup>1</sup>

(3) The powers conferred on a Magistrate by this section may in a Presidency-town be exercised by the Commissioner of Police as well as by any Magistrate specially empowered in this behalf under sub-section (1).

10. When a person is convicted of an offence punishable under this Act or the rules made under this Act, the Court before which he is convicted may direct that the explosive, or ingredient of the explosive, or the substance (if any) in respect of which the offence has been committed, or any part of that explosive, ingredient or substance, shall, with the receptacles containing the same, be forfeited.

Forfeiture  
of explosives.

11. Where the owner or master of a vessel is adjudged under this Act to pay a fine for an offence committed with, or in relation to, that vessel, the Court may, in addition to any other power it may have for the purpose of compelling payment of the fine, direct it to be levied by distress and sale of the vessel, and the tackle, apparel and furniture thereof, or so much thereof as is necessary.

Distress of  
vessel.

XLV of 1860.

12. Whoever abets, within the meaning of the Indian Penal Code,<sup>2</sup> the commission of an offence punishable under this Act, or the rules made under this Act, or attempts to commit any such offence and in such attempt does any act towards the commission of the same, shall be punished as if he had committed the offence.

Abetment  
and attempts.

13. Whoever is found committing any act for which he is punishable under this Act or the rules under this Act, and which tends to cause explosion or fire in or about any place where an explosive is manufactured or

Power to  
arrest with-  
out warrant  
persons  
committing

<sup>1</sup> See now Act V of 1898

<sup>2</sup> Printed, General Acts, Vol. I, Ed. 1898, p 240.

dangerous  
offences.

stored, or any railway or port, or any carriage, ship or boat, may be apprehended without a warrant by a Police-officer, or by the occupier of, or the agent or servant of, or other person authorized by the occupier of, that place, or by any agent or servant of, or other person authorized by, the railway administration or conservator of the port, and be removed from the place where he is arrested and conveyed as soon as conveniently may be before a Magistrate

Saving for  
manufacture,  
possession,  
use, sale,  
transport  
or importa-  
tion by  
Government.

14. Nothing in this Act shall apply to the manufacture, possession, use, sale, transport or importation of any explosive—

(a) by order of the Government, or

(b) by any person employed under the Government in the execution of this Act, or as a keeper of a magazine, artizan, soldier, sailor, policeman or otherwise, or enrolled as a volunteer under the Indian Volunteers Act, 1869,<sup>1</sup> in the course of his employment or duty as such.

XX of 1869.

Saving of  
Indian Arms  
Act, 1878.

15. Nothing in this Act shall affect the provisions of the Indian Arms Act, 1878 <sup>2</sup>

XI of 1878.

Provided that an authority granting a license under this Act for the manufacture, possession, sale, transport or importation of an explosive may, if empowered in this behalf by the rules under which the license is granted, direct by an order written on the license that it shall have the effect of a like license granted under the said Indian Arms Act <sup>2</sup>

XI of 1878.

Saving as to  
liability  
under other  
law.

16. Nothing in this Act or the rules under this Act shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or those rules, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act or those rules :

Provided that a person shall not be punished twice for the same offence.

Extension of  
definition of  
"explosive"  
to other  
explosive  
substances.

17. The Governor General in Council may, from time to time, by notification in the Gazette of India, declare that any substance which appears to the Governor General in Council to be specially dangerous to life or property, by reason either of its explosive properties or of any process in the manufacture thereof being liable to explosion, shall be deemed to be an explosive within the meaning of this Act;<sup>3</sup> and the provisions of this Act (subject to such exceptions, limitations and restrictions as may be specified

<sup>1</sup> Printed, General Acts, Vol II, Ed 1898, p 112

<sup>2</sup> Printed, General Acts, Vol III, Ed. 1898, p 243

<sup>3</sup> Picric acid, with certain exceptions, has been declared to be an explosive within the meaning of the Act, see Gazette of India, 1897, Pt. I, p 691.

in the notification) shall accordingly extend to that substance in like manner as if it were included in the definition of the term "explosive" in this Act.

18. (1) An authority making rules under this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby

Procedures  
for making,  
publication  
and confirm-  
ation of  
rules

(2) The publication shall be made in such manner as the Governor General in Council, from time to time, by notification in the Gazette of India, prescribes <sup>1</sup>

(3) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration

(4) The authority making the rules shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified

(5) A rule made under this Act shall not take effect if it is made by the Governor General in Council until it has been published in the Gazette of India, and if it is made by the Local Government until it has been published in the local official Gazette.

(6) The publication in the Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made, and, if it requires sanction, that it has been duly sanctioned

(7) All powers to make rules conferred by this Act may be exercised from time to time as occasion requires.

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## THE INLAND STEAM-VESSELS ACT, 1884.

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### CONTENTS.

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#### CHAPTER I.

#### PRELIMINARY.

#### SECTIONS.

1. Short title and extent.
2. Commencement
3. Repeal of enactments.

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<sup>1</sup> For notification prescribing the manner in which draft rules may be published, *see* Gazette of India, 1887, Pt I, p 448  
For similar notification for Upper Burma, *see* Burma Rules Manual, Ed 1897, p 154.

## SECTIONS.

- 4. Reference to repealed Acts in other Acts, Regulations and Notifications.
- 5. Definitions.

---

CHAPTER II.

## SURVEY OF INLAND STEAM-VESSELS.

- 6. Inland steam-vessel not to proceed on voyage without a certificate of survey.
- 7. Appointment of surveyors and places of survey.
- 8. Powers of surveyors.
- 8A. Fees in respect of surveys
- 9. Declaration of surveyor
- 10. Sending of declaration by owner or master to Local Government.
- 11. Grant of certificate of survey by Local Government
- 12. [*Repealed*]
- 13. Certificate of survey to be affixed in conspicuous part of steam-vessel.
- 14. Term of certificates of survey.
- 15. Cancellation or suspension of certificate of survey by Local Government.
- 16. Power to require delivery of expired or cancelled certificate
- 17. Report of cancellation or suspension of certain certificates
- 18. Power for Local Government to direct that two surveyors be employed.
- 19. Power for Local Government to order a second survey.
- 20. Division of duties when two surveyors employed.
- 21. Power for Local Government to make rules as to surveys.

---

CHAPTER III.

## MASTERS (INCLUDING SERANGS) AND ENGINEERS (INCLUDING ENGINE-DRIVERS) OF INLAND STEAM-VESSELS.

- 22. Appointment of examiners
- 23. Grant of masters' and serangs' certificates of competency.
- 24. Grant of engineers' and engine-drivers' certificates of competency.
- 25. Power for Local Government to require re-examination or further inquiry.
- 25A. Grant of certificates of service.
- 26. Certificates to be made in duplicate.
- 27. Copy of certificate to be granted in certain cases.
- 28. Nature of certificates necessary in case of different steam-vessels.
- 29. Power for Local Government to make rules as to grant of certificates of competency and certificates of service.

## CHAPTER IV.

## INVESTIGATIONS INTO CASUALTIES.

## SECTIONS.

30. Report of casualties to be made to Local Government.
31. Power for Local Government to appoint special Court of Investigation.
32. Power for principal Court of ordinary criminal jurisdiction to hold investigations into casualties when so directed.
33. Power for Court of Investigation to inquire into charges against masters, engineers and engine-drivers.
34. Power for Local Government to direct investigation into charges of incompetency or misconduct.
35. Person accused to be heard.
36. Assessors.
37. Powers of Court as to evidence and regulation of proceedings.
38. Power to arrest witnesses and cause entry and detention of vessels.
39. Power to commit for trial and bind over witnesses.
40. Depositions.
41. Report by Court to Local Government.
42. Power to investigate causes of explosions on board inland steam-vessels.

## CHAPTER V.

## SUSPENSION AND CANCELLATION OF MASTERS' AND ENGINEERS' CERTIFICATES.

43. Power for Local Government to suspend or cancel certificates in certain cases.
44. Obligation to deliver up cancelled or suspended certificate.
45. Report to other Local Government.
46. Power to revoke cancellation or suspension and to grant new certificate.

## CHAPTER VI.

## PROTECTION OF INLAND STEAM-VESSELS FROM DANGER BY FIRE.

47. Power for Governor General in Council to declare dangerous goods.
48. Carriage of dangerous goods.
49. Power to throw overboard dangerous goods.
50. Power for Local Government to make rules for protection of inland steam-vessels from danger by explosion or fire.

## CHAPTER VII.

## CARRIAGE OF PASSENGERS IN INLAND STEAM-VESSELS.

51. Power for Local Government to make rules for the regulation of the carriage of passengers in inland steam-vessels.

## SECTIONS.

- . 51A. Power for Local Government to make rules for protection of passengers.

---

CHAPTER VIII

## PENALTIES AND LEGAL PROCEEDINGS.

- 52 Penalty for inland steam-vessel making a voyage without certificate of survey  
53. Penalty for neglect to affix certificate of survey in inland steam-vessel  
54. Penalty for neglect or refusal to deliver up certificate of survey.  
54A. Penalty for having excessive number of passengers on board.  
55. Penalty for seiving, or engaging a person to serve, as master, engineer or engine-driver without certificate.  
56 Penalty for master failing to give notice of wreck or casualty  
57. Penalty for master, engineer or engine-driver failing to deliver up cancelled or suspended certificate  
58 Penalty for taking dangerous goods on board inland steam-vessel without notice  
59. Penalty for misconduct endangering inland steam-vessel or life or limb.  
60. Distress of inland steam-vessel.  
61. Jurisdiction of Magistrates.  
62. Place of trial  
63 Saving of prosecutions under other laws

---

CHAPTER IX.

## SUPPLEMENTAL.

64. Power for Local Government to exempt certain inland steam-vessels from Chapters II and III.  
65 Power for Local Government to define tidal water.  
66. Fees recoverable as fines.  
67. Exemption of Government vessels.  
68. Certificated masters of inland steam-vessels to be deemed pilots under Ports Act.  
69. Procedure for making, publication and confirmation of rules.

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THE FIRST SCHEDULE.—ACTS REPEALED.

THE SECOND SCHEDULE.—RATES OF FEES.

ACT No. VI of 1884.<sup>1</sup>

[29th February, 1884.]

An Act to amend the law relating to the Survey, and the Examination and Grant of Certificates to Engineers, of Inland Steam-vessels, and to provide for certain other matters relating to those vessels.

WHEREAS it is expedient to amend the law relating to the survey of inland steam-vessels and the examination and grant of certificates to engineers of those vessels;

And whereas it is also expedient to provide for the grant of certificates to the masters of inland steam-vessels and for investigations into casualties affecting, and into charges against masters and engineers of, those vessels, and for the protection of passengers and goods carried thereon from danger by fire, and for the regulation of the carriage of passengers therein;

It is hereby enacted as follows.—

## CHAPTER I

## PRELIMINARY.

1. (1) This Act may be called the Inland Steam-vessels Act, 1884
- (2) It extends in the first instance to the whole of British India, except the territories administered by the Governor of Fort St George in Council
- (3) But the Governor of Fort St George in Council may, at any time, by notification in the local official Gazette, extend this Act or any part thereof to the whole or any part of the territories under his administration.
2. (1) This Act shall come into force in the whole of British India, except the territories administered by the Governor of Fort St George in Council, on such day<sup>2</sup> as the Governor General in Council, by notification in the Gazette of India, directs.
- (2) If the Governor of Fort St. George in Council extends this Act or any part thereof to the whole or any part of the territories under his admin-

Short title  
and extent.Commence-  
ment

<sup>1</sup> For Statement of Objects and Reasons, *see* Gazette of India, 1883, Pt V, p 229, for Proceedings in Council, *see ibid*, Supplement, pp 306 & 763, and *ibid*, 1884, Supplement, p 390

The Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898) It had previously been extended there under s 5 of Act XIV of 1874, *see* notification printed Gazette of India, 1888, Pt I, p 524

<sup>2</sup> Act VI of 1884 came into force in the whole of British India, except the territories administered by the Governor of Fort St George in Council, on and from the 1st December, 1885, *see* Gazette of India, 1885, Pt I, p 577

## (Chapter I—Preliminary Secs 3-4)

istration, the Act or part so extended shall come into force in the local area to which it is so extended on such day as the Governor in Council, by the notification extending the Act or part, directs:

(3) Provided that any notification, rule or appointment may be made under this Act at any time after the passing thereof, but, except in the case of a notification under section 69, sub-section (2), shall not take effect until the Act or part thereof, under which the notification, rule or appointment is made, comes into force

Repeal of  
enactments.

3. (1) On and from the day on which this Act comes into force, elsewhere than in the territories administered by the Governor of Fort St. George in Council, the Acts mentioned in the first column of the first schedule hereto annexed shall be repealed to the extent mentioned in the third column thereof.

(2) But all <sup>1</sup> \* \* investigations held, and certificates granted, cancelled or suspended under any of the said Acts shall be deemed to have been respectively <sup>2</sup> \* \* held, granted, cancelled or suspended under this Act or under the Indian Steam-ships Act, 1884,<sup>3</sup> as the case may be.

VII of 1884.

(3) For the purposes of the last foregoing sub-section, a certificate granted to the commander of an inland steam-vessel under Bengal Act VII of 1879 <sup>4</sup> (to provide for the proper management of certain inland steam-vessels) shall be deemed to be a first-class master's certificate granted under this Act; and an engineer's certificate, whether of competency or service, granted under any other of the Acts repealed by this Act shall be deemed to be an engineer's certificate granted under this Act or a first-class engineer's certificate granted under the Indian Steam-ships Act, 1884,<sup>3</sup> as the case may be.

VII of 1884.

Reference to  
repealed Acts  
in other Acts,  
Regulations  
and Notifica-  
tions.

4. When in any Act, Regulation or Notification passed or issued before this Act comes into force, reference is made to any Act repealed by this Act, the reference shall, so far as may be practicable, be read as applying to this Act or the Indian Steam-ships Act, 1884,<sup>3</sup> or the corresponding part of this Act or that Act, as the case may be

VII of 1884.

<sup>1</sup> The words "proceedings commenced" were repealed by the Repealing and Amending Act, 1891 (XII of 1891), printed, General Acts, Vol. VI

<sup>2</sup> The word "commenced" was repealed by the Repealing and Amending Act, 1891 (XII of 1891)

<sup>3</sup> Printed, *infra*, p 740

<sup>4</sup> Bengal Act VII of 1879 is repealed by this Act

(Chapter I.—Preliminary Sec 5. Chapter II.—Survey of Inland Steam-vessels Secs. 6-7)

5. In this Act, unless there is something repugnant in the subject or context,—

Definitions.

(1) "vessel" includes anything made for the conveyance by water of human beings or of property:

(2) "steam-vessel" means every description of vessel propelled wholly or in part by the agency of steam.

<sup>1</sup>[(3) "inland water"<sup>2</sup> means any canal, river, lake or navigable water in British India:]

(4) "inland steam-vessel" means a steam-vessel which ordinarily plies on inland water:

(5) "voyage" includes also the plying of a vessel at or about any place:

(6) "master" means any person (except a pilot or harbour-master) having for the time being the charge or control of a vessel.

(7) "passenger" includes any person carried in a steam-vessel other than the master and crew and the owner, his family and servants.

(8) "prescribed" means prescribed by a rule made by the Local Government under this Act.

## CHAPTER II.<sup>3</sup>

### SURVEY OF INLAND STEAM-VESSLS.

6. (1) An inland steam-vessel shall not proceed on any voyage unless she has a certificate of survey under this Act in force and applicable to the voyage on which she is about to proceed or the service on which she is about to be employed.

Inland steam-vessel not to proceed on voyage without a certificate of survey.

(2) Nothing in this section shall apply to any steam-vessel<sup>4</sup> proceeding on a voyage during the interval between the time at which her certificate under this Act expires and the time at which it is first practicable to have the certificate renewed.

7. (1) The Local Government may, from time to time, appoint so many persons as it thinks fit to be surveyors for the purposes of this Act at such

Appointment of surveyors and places of survey.

<sup>1</sup> This clause was substituted for the original clause by the Indian Steam-ships Law Amendment Act, 1890 (III of 1890), s. 1, printed, General Acts, Vol V, p 368

<sup>2</sup> For power to define how much of any tidal water shall be deemed to be an "inland water," see s 65, *infra*

<sup>3</sup> For power to exempt vessels from the provisions of Ch II, or to modify that Chapter, see s. 64, *infra*.

<sup>4</sup> As to exemption of Government vessels, see s 67, *infra*

## (Chapter II.—Survey of Inland Steam-vessels Secs 8-9)

places within the territories under its administration as it, from time to time, appoints to be places of survey.<sup>1</sup>

(2) Every surveyor appointed under this Act may be suspended or removed by the Local Government which appointed him

(3) Every surveyor appointed under this Act shall, for the purposes of any survey made by him, be deemed to be a public servant within the meaning of the Indian Penal Code.<sup>2</sup>

XLV of 1860

Powers of surveyors.

8. (1) For the purposes of a survey under this Act, any surveyor appointed under this Act may, at any reasonable time, go on board any inland steam-vessel, and may inspect the steam-vessel and every part thereof, and the machinery, equipments or articles on board thereof:

Provided that he does not unnecessarily hinder the loading or unloading of the steam-vessel, or unnecessarily detain or delay her from proceeding on any voyage

(2) The owner, master and officers of the steam-vessel shall afford to the surveyor all reasonable facilities for a survey, and all such information respecting the steam-vessel, and her machinery and equipments, or any part thereof, respectively, as he reasonably requires

Fees in respect of surveys.

8A.<sup>3</sup> Before a survey under this Act is commenced, the owner or master of the steam-vessel to be surveyed shall pay to such officer as the Local Government, from time to time, appoints in this behalf—<sup>4</sup>

(a) a fee calculated on the tonnage of the steam-vessel according to the rates in the second schedule hereto annexed, or according to any other prescribed rates, and,

(b) when the survey is to be made in any place of survey other than Calcutta, Madras, Bombay or Rangoon, such additional fee in respect of the expense (if any) of the journey of the surveyor to the place as the Local Government, from time to time, by notification in the official Gazette, directs

Declaration of Surveyor.

9. When a survey under this Act is completed, the surveyor making it shall forthwith, if satisfied that he can with propriety do so, give to the

<sup>1</sup> For places appointed places of survey in—

(a) the Presidency of Bombay, *see* list on p cxvi of Vol I of the Bombay List of Local Rules and Orders, Ed 1896,

(b) Burma, *see* Burma Gazette, 1890, Pt I, p. 65

<sup>2</sup> Printed, General Acts, Vol I, Ed 1898, p. 240

<sup>3</sup> S. 8A was inserted by s 2 of the Indian Steam-ships Law Amendment Act, 1890 (III of 1890), printed, General Acts, Vol V, p 368.

<sup>4</sup> For officers appointed at places in Bombay Presidency to receive fees and surveyor's declarations and to deliver certificates of survey in—

(a) the Presidency of Bombay, *see* Bombay List of Local Rules and Orders, Ed. 1896, Vol I, p cxvi;

(b) Burma, *see* Burma Gazette, 1891, Pt I, p 209.

owner or master of the steam-vessel surveyed a declaration in the prescribed form containing the following particulars, namely:—

- (a) that the hull and machinery of the steam-vessel are sufficient for the service intended and in good condition;
- (b) that the equipments of the steam-vessel and the certificates of the master and engineer or engine-driver are such and in such condition as are required by any law for the time being in force and applicable to the steam-vessel,
- (c) the time (if less than one year) for which the hull, machinery and equipments of the steam-vessel will be sufficient;
- (d) the limit (if any) beyond which, as regards the hull, machinery or equipments, the steam-vessel is in the surveyor's judgment not fit to ply;
- (e) the number of passengers (if any) which the steam-vessel is in the judgment of the surveyor fit to carry, distinguishing, if necessary, between the respective numbers to be carried on the deck and in the cabins, and in different parts of the deck and cabins, the number to be subject to such conditions and variations, according to the time of year, the nature of the voyage, the cargo carried or other circumstances as the case requires; and
- (f) any other prescribed particulars.

10. (1) The owner or master to whom a declaration is given under the last foregoing section shall, within fourteen days after the date of the receipt thereof, send the declaration to such officer as the Local Government, from time to time, appoints in this behalf.

*Sending of declaration by owner or master to Local Government.*

(2) If he fails to do so, he shall forfeit a sum not exceeding five rupees for every day during which the sending of the declaration is delayed.

(3) The owner or master shall pay the sum so forfeited on the delivery of the certificate of survey \* \* \*.<sup>1</sup>

11. (1) Upon receipt of a declaration by the officer appointed<sup>2</sup> in this behalf under the last foregoing section, the Local Government shall, if satisfied that the provisions of this Act have been complied with, cause a certi-

*Grant of certificate of survey by Local Government.*

<sup>1</sup> The words "in addition to the fee payable for the certificate" were repealed by s 3 of the Indian Steam-ships Law Amendment Act, 1890 (III of 1890), printed, General Acts, Vol V, Ed 1898, p 368

<sup>2</sup> For notification appointing officers under this section to grant certificates of survey in—

(a) the Presidency of Bombay, *see* Bombay List of Local Rules and Orders, Ed. 1896, Vol I, p. cxvii;

(b) Burma, *see* Burma Gazette, 1891, Pt I, p. 266.

ificate in duplicate to be prepared and delivered, through such officer at the place at which the steam-vessel was surveyed as the Local Government, from time to time, appoints in this behalf, to the owner or master of the steam-vessel surveyed, on his applying and paying the \* \* \* \* 1 sums (if any) in this Act mentioned as payable on delivery of a certificate.

(2) A certificate granted under this section shall be in such form as the Governor General in Council, from time to time, directs, shall contain a statement to the effect that the provisions of this Act with respect to the survey of the steam-vessel and the transmission of the declaration in respect thereof have been complied with, and shall set forth—

(a) the particulars concerning the steam-vessel which clauses (c), (d) and (e) of section 9 require the declaration by the surveyor to contain, and

(b) any other prescribed particulars.

(3) When a certificate is ready for delivery under this section, the Local Government shall cause notice thereof to be given by post or otherwise to the owner or master of the steam-vessel to which the certificate relates.

<sup>2</sup> (4) The Local Government may, from time to time, delegate,—

(a) with the previous sanction of the Governor General in Council, to any person, by name or as holding an office, the function, assigned to the Local Government by sub-section (1), of granting a certificate of survey under that sub-section;

(b) of its own authority, to any person, by name or as holding an office, the function, assigned to the Local Government by sub-section (3), of causing notice to be given of a certificate of survey being ready for delivery:<sup>3</sup>

Provided, with respect to clause (a) of this sub-section, that no delegation of the function mentioned in that clause shall be construed to authorise the grant of a certificate of survey by the surveyor who gave the declaration of survey under section 9.

12. [*Fees for certificates of survey.*] *Rep. by the Indian Steam-ships Law Amendment Act, 1890 (III of 1890), s 5.*

<sup>1</sup> The words "fees and other" were repealed by s 4 (1) of the Indian Steam-ships Law Amendment Act, 1890 (III of 1890), printed, General Acts, Vol V, Ed 1898, p. 368.

<sup>2</sup> Sub-sec (4) was added by s 4 (2) of the Indian Steam-ship Law Amendment Act, 1890 (III of 1890)

<sup>3</sup> For List of officers to whom the powers conferred by this clause have been delegated in—

(a) the Presidency of Bombay, see Bombay List of Local Rules and Orders, Ed. 1896, Vol I, p cxvii,

(b) Burma, see Burma Gazette, 1891, Pt I, p 209

13. The owner or master of every steam-vessel for which a certificate of survey has been granted under this Act shall forthwith, on the receipt of the certificate, cause one of the duplicates thereof to be affixed, and kept affixed so long as it remains in force and the steam-vessel is in use, on some conspicuous part of the steam-vessel where it may be easily read by all persons on board thereof.

Certificate of survey to be affixed in conspicuous part of steam-vessel.

14. A certificate of survey granted under this Act shall not be in force—

Term of certificates of survey

- (a) after the expiration of one year from the date thereof; or
- (b) after the expiration of the period, if less than one year, for which the hull, boilers, engines or any of the equipments have been stated in the certificate to be sufficient; or
- (c) after notice has been given by the Local Government, to the owner or master of the steam-vessel to which the certificate relates, that the Local Government has cancelled or suspended it.

15. Any certificate of survey granted under this Act may be cancelled or suspended by a Local Government if it has reason to believe—

Cancellation or suspension of certificate of survey by Local Government.

- (a) that the declaration by the surveyor of the sufficiency and good condition of the hull, boilers, engines or any of the equipments of the steam-vessel has been fraudulently or erroneously made; or
- (b) that the certificate has otherwise been granted upon false or erroneous information; or
- (c) that, since the making of the declaration, the hull, boilers, engines or any of the equipments of the steam-vessel have sustained any injury, or have otherwise become insufficient

16. The Local Government may require any certificate of survey which has expired or has been cancelled or suspended to be delivered up to such person as it, from time to time, directs<sup>1</sup>

Power to require delivery of expired or cancelled certificate. Report of cancellation or suspension of certain certificates.

17. If the Local Government which cancels or suspends a certificate of survey granted under this Act is not the Local Government which<sup>2</sup> [or whose delegate] granted the certificate, the Local Government cancelling or suspending the certificate shall report the fact of cancellation or suspension, together with the reasons therefor, to the Local Government which<sup>2</sup> [or whose delegate] granted the certificate.

<sup>1</sup> For notification issued under this section as to certificates issued—

(a) at Karachi, *see* Bombay List of Local Rules and Orders, Ed. 1896, Vol. I, p. cxvii;

(b) in Burma, *see* Burma Gazette, 1890, Pt. I, p. 65

<sup>2</sup> These words were inserted by s. 6 of the Indian Steam-ships Law Amendment Act, 1890 (III of 1890), printed, General Acts, Vol. V, Ed. 1898, p. 368

## (Chapter II—Survey of Inland Steam-vessels. Secs 18-21.

Power for  
Local Gov-  
ernment to  
direct that  
two survey-  
ors be em-  
ployed

18. A survey under this Act shall ordinarily be made by one surveyor, but two surveyors may be employed if the Local Government, by order in writing,<sup>1</sup> so directs, either generally in the case of all steam-vessels at any place of survey, or specially in the case of any particular steam-vessel or class of steam-vessels at any such place.

Power for  
Local Gov-  
ernment to  
order a second  
survey.

19. (1) If the surveyor or surveyors making a survey under this Act refuses or refuse to give a declaration under section 9 with regard to any steam-vessel, or gives or give a declaration with which the owner or master of the steam-vessel surveyed is dissatisfied, the Local Government may, on the application of the owner or master<sup>2</sup> [and the payment by him of such fee, not exceeding twice the amount of the fee for the previous survey, as the Local Government may require,] direct two other surveyors appointed under this Act to survey the steam-vessel

(2) The surveyors so directed shall forthwith survey the steam-vessel, and may, after the survey, either refuse to give a declaration or give such declaration as under the circumstances seems to them proper; and their decision shall be final.

Division of  
duties when  
two survey-  
ors employed.

20. When a survey is made under either of the last two foregoing sections by two surveyors, each of the surveyors making the survey shall perform a prescribed portion of the duties assigned by this Act or the rules made under this Act to a surveyor making a survey.

Power for  
Local Gov-  
ernment to  
make rules as  
to surveys.

21. (1) The Local Government may make rules to regulate the making of surveys under this Act.

(2) Rules under this section may, among other matters,—

(a) declare the times and places at which, and the manner in which, surveys are to be made;<sup>3</sup>

(b) regulate the duties of the surveyor making a survey, and, where two surveyors are employed, assign the respective duties of each of the surveyors employed;

(c) declare the<sup>4</sup> form in which the declarations of surveyors and cer-

<sup>1</sup> For order issued by the Government of Bombay under this power as to inland vessels at Karachi, see Bombay List of Local Rules and Orders, Ed 1896, Vol I, p cxvii

For similar order issued for the whole of Burma, see Burma Gazette, 1891, Pt I, p 209.

<sup>2</sup> These words were inserted by s 7 of the Indian Steam-ships Law Amendment Act, 1890 (III of 1890), printed, General Acts, Vol V, Ed 1898, p 368.

<sup>3</sup> For rules made under this clause for survey of inland steam-vessels in—

(a) Assam see Assam Rules Manual, Ed 1893, p 217,

(b) Bombay, for the Port of Bombay and for the river Indus, see Bombay List of Local Rules and Orders, Ed 1896, Vol I, p cxvii;

(c) Burma, see Burma Gazette, 1891, Pt I, p 495

<sup>4</sup> For forms of certificates of survey and for granting declarations of survey, in the case of certain inland steam-vessels in Bengal, see Calcutta Gazette, 1897, Pt. I, pp. 1120 & 1123, respectively.

(Chapter III—Masters (including Serangs) and Engineers (including Engine-drivers) of Inland Steam-vessels. Secs 22-24)

tificates of survey granted under this Act are to be framed, and the nature of the particulars which are to be stated therein, respectively;

- (d) fix the rates according to which the fees payable <sup>1</sup> [in respect of surveys] are to be calculated in the case of all or any of the places of survey within the territories under its administration; and
- (e) define the cases in, and the extent to, which under ordinary circumstances a survey may be dispensed with before the grant of a new certificate

### CHAPTER III <sup>2</sup>

#### MASTERS (INCLUDING SERANGS) AND ENGINEERS (INCLUDING ENGINE-DRIVERS) OF INLAND STEAM-VESSLS

22. The Local Government may, from time to time, appoint persons <sup>3</sup> for the purpose of examining the qualifications of persons desirous of obtaining certificates of competency as masters or serangs, or as engineers or engine-drivers, of inland steam-vessels

Appointment of examiners.

23. (1) The Local Government shall grant to every person who is reported by the examiners to possess the necessary qualifications a certificate of competency to the effect that he is competent to act as a first-class master, second-class master or serang, as the case may be, of an inland steam-vessel.

Grant of masters' and serangs' certificates of competency.

(2) Every certificate granted under this section shall be in the prescribed form.

24. (1) The Local Government shall grant to every person who is reported by the examiners to possess the necessary qualifications a certificate of competency to the effect that he is competent to act as an engineer, first-class engine-driver or second-class engine-driver, as the case may be, of an inland steam-vessel.

Grant of engineers' and engine-drivers' certificates of competency.

<sup>1</sup> These words were substituted for the words "for certificates of survey" by s. 8 of the Indian Steam-ships Law Amendment Act, 1890 (III of 1890), printed, General Acts, Vol. V, Ed 1898, p 368

<sup>2</sup> Ch. III was substituted for the original Chapter by s. 1 of the Inland Steam-vessels Act, 1884, Amendment Act, 1891 (XIII of 1891), printed, General Acts, Vol. VI. For power to exempt vessels from the provisions of Ch. III, or to modify the Chapter, see s. 64, *infra*

<sup>3</sup> For persons appointed examiners for engineers' or engine-drivers' certificates, and for masters' or serangs' certificates in the Presidency of Bombay, see the Bombay Law of Local Rules and Orders, Ed 1896, Vol. I, p cxvii

(Chapter III.—Masters (including Serangs) and Engineers (including Engine-drivers) of Inland Steam-vessels Secs 25-28.)

(2) Every certificate granted under this section shall be in the prescribed form.

Power for Local Government to require re-examination or further inquiry.

25. Before granting a certificate under either of the two last foregoing sections, the Local Government may, if it has reason to believe that the report of the examiners regarding any applicant has been unduly made, require a re-examination of the applicant or a further inquiry into his testimonials and character

Grant of certificates of service.

25A. (1) The Local Government may in its discretion grant without examination to any person who has served as a master, or as an engineer, of an inland steam-vessel before the first day of April, 1890, a certificate of service to the effect that he may act as a first-class master, second-class master or serang, or as an engineer, first-class engine-driver or second-class engine-driver, as the case may be, of an inland steam-vessel

(2) A certificate of service so granted shall have the same effect as a certificate of competency granted under this Act after examination.

Certificates to be made in duplicate.

26. Every certificate of competency or service granted under this Act shall be made in duplicate, and one copy shall be delivered to the person entitled to a certificate, and the other shall be kept and recorded in the prescribed manner.

Copy of certificate to be granted in certain cases

27. Whenever a master or serang, or an engineer or engine-driver, proves, to the satisfaction of the Local Government which granted his certificate, that he has, without fault on his part, lost or been deprived of it, a copy of the certificate to which by the record kept as provided by law he appears to be entitled shall be granted to him, and shall have all the effect of the original

Nature of certificates necessary in case of different steam-vessels.

28. (1) An inland steam-vessel having engines of eighty nominal horsepower or upwards shall not proceed on any voyage unless she has—

(a) as her master a person possessing a first-class master's certificate granted under this Act or a master's certificate granted under Act I of 1859,<sup>1</sup> (*for the amendment of the law relating to Merchant Seamen*) or the Merchant Shipping Acts, 1854 to 1889,<sup>2</sup> or to which the provisions of any such Act have been made applicable under the Merchant Shipping (Colonial) Act, 1869,<sup>2</sup> and

17 & 18 Vict., c 104, &c.

32 & 33 Vict., c 11.

<sup>1</sup> The Indian Merchant Shipping Act, 1859, printed, General Acts, Vol I, Ed 1898, p. 167.

<sup>2</sup> See now the Merchant Shipping Act, 1894 (57 & 58 Vict, c 60), by which these Acts have been repealed.

(Chapter III—Masters (including Serangs) and Engineers (including Engine-drivers) of Inland Steam-vessels. Sec. 28.)

VII of 1884.

- (b) as her engineer a person possessing an engineer's certificate granted under this Act or the Indian Steam-ships Act, 1884,<sup>1</sup> or the Merchant Shipping Acts, 1854 to 1889, or to which the provisions of any such Act have been made applicable under the Merchant Shipping (Colonial) Act, 1869,<sup>2</sup>

(2) An inland steam-vessel having engines of thirty nominal horse-power or upwards but of less than eighty nominal horse-power shall not proceed on any voyage unless she has—

- (a) as her master a person possessing a second-class master's certificate granted under this Act or a certificate of the higher grade of the nature referred to in clause (a) of sub-section (1), and

- (b) as her engineer a person possessing a first-class engine-driver's certificate granted under this Act or an engine-driver's certificate granted under the Indian Steam-ships Act, 1884,<sup>1</sup> or a certificate of the higher grade of the nature referred to in clause (b) of sub-section (1):

VII of 1884.

Provided that a steam-vessel shall be deemed to have complied with this sub-section if she has as her master and engineer a person possessing both a second-class master's certificate and a first-class engine-driver's certificate granted under this Act, or in substitution for either of such certificates, as the case may be, a master's certificate or an engineer's certificate of the higher grade of the nature referred to in sub-section (1).

(3) An inland steam-vessel having engines of less than thirty nominal horse-power shall not proceed on any voyage unless she has—

- (a) as her master a person possessing a serang's certificate granted under this Act or a certificate of the higher grade of the nature referred to in clause (a) of sub-section (1) or sub-section (2) and

- (b) as her engineer a person possessing a second-class engine-driver's certificate granted under this Act or an engine-driver's certificate granted under the Indian Steam-ships Act, 1884,<sup>1</sup> or a certificate of the higher grade of the nature referred to in clause (b) of sub-section (1) or sub-section (2):

VII of 1884.

Provided that a steam-vessel shall be deemed to have complied with this sub-section if she has as her master and engineer a person possessing both

<sup>1</sup> Printed, *infra*, p 740

<sup>2</sup> See now the Merchant Shipping Act, 1894 (57 & 58 Vict, c 60), by which these Acts have been repealed

(Chapter III—Masters (including Serangs) and Engineers (including Engine-drivers) of Inland Steam-vessels Sec. 29)

a serang's certificate and a second-class engine-driver's certificate granted under this Act, or, in substitution for either of such certificates, as the case may be, a master's certificate or an engineer's or engine-driver's certificate of the higher grade of the nature referred to in sub-section (1) or sub-section (2).

(4) Notwithstanding anything in sub-section (1), sub-section (2) or sub-section (3), the Local Government may, by general or special order, direct that a person possessing a master's certificate granted under Act I of 1859<sup>1</sup> (for the amendment of the law relating to Merchant Seamen) or the Merchant Shipping Acts, 1854 to 1889,<sup>2</sup> or to which the provisions of any such Act have been made applicable under the Merchant Shipping (Colonial) Act, 1869,<sup>2</sup> or possessing an engineer's certificate granted under the Indian Steam-ships Act, 1884,<sup>3</sup> or the Merchant Shipping Acts, 1854 to 1889, or to which the provisions of any such Act have been made applicable under the Merchant Shipping (Colonial) Act, 1869,<sup>2</sup> shall not act as master or engineer, as the case may be, of an inland steam-vessel unless he also possesses, in the case of a master,<sup>4</sup> such a master's or serang's certificate granted under this Act as qualifies him under this section to act as master of the vessel, or, in the case of an engineer, such an engineer's or engine-driver's certificate granted under this Act as qualifies him under this section to act as engineer of the vessel:

17 & 18 Vict,  
c 104, &c

32 & 33 Vict,  
c 11

VII of 1884

Provided that, for the purposes of this sub-section, the Local Government may, in its discretion, grant without examination a master's or serang's or an engineer's or engine-driver's certificate of competency under this Act, and that a certificate of competency so granted without examination shall have the same effect as a certificate of competency granted under this Act after examination.<sup>5</sup>

29. (1) The Local Government may make rules to regulate the granting of certificates of competency under this Act, and may by such rules—<sup>6</sup>

Power for  
Local Gov-  
ernment to

<sup>1</sup> The Indian Merchant Shipping Act, 1859, printed, General Acts, Vol I, Ed 1898, p. 167.

<sup>2</sup> See now the Merchant Shipping Act, 1894 (57 & 58 Vict, c. 60), by which these Acts have been repealed.

<sup>3</sup> Printed, *infra*, p 740

<sup>4</sup> For instance of a notification issued under this power, see Burma Gazette, 1891, Pt I, p. 501.

<sup>5</sup> For notification issued under this power declaring persons qualified to act as engineers of inland steam-vessels at Karachi, see Bombay List of Local Rules and Orders, Ed 1896, Vol. I, p cxviii

<sup>6</sup> For rules under the section as to the grant of certificates of competency and of service to masters and serangs, engineers and engine-drivers in the Presidency of Bombay, see Bombay List of Local Rules and Orders, Ed 1896, Vol I, p cxviii

*(Chapter IV—Investigations into Casualties Secs 30-31)*

- (a) provide for the conduct of the examination of persons desirous of obtaining certificates of competency as masters or serangs, or as engineers or engine-drivers, under this Act; make rules as to grant of certificates of competency and certificates of service.
  - (b) prescribe the qualifications to be respectively required of persons desirous of obtaining first-class masters' certificates, second-class masters' certificates, serangs' certificates, engineers' certificates, first-class engine-drivers' certificates and second-class engine-drivers' certificates, respectively,
  - (c) fix the fees to be paid by all applicants for examination; and
  - (d) prescribe the form in which certificates are to be framed, and the manner in which the copy of the certificate which is kept by the Local Government is to be recorded.
- (2) The Local Government may also make rules with respect to the grant of certificates of service under this Act, and may by such rules—
- (a) fix the fees to be paid for such certificates, and
  - (b) prescribe the form in which such certificates are to be framed and the manner in which the copy of the certificate which is kept by the Local Government is to be recorded.

## CHAPTER IV.

## INVESTIGATIONS INTO CASUALTIES

## 30. (1) Whenever—

- (a) any inland steam-vessel has been wrecked, abandoned or materially damaged, or,
- (b) by reason of any casualty happening to or on board of any inland steam-vessel, loss of life has ensued, or
- (c) any inland steam-vessel has caused loss or material damage to any other vessel,

Report of casualties to be made to Local Government

the master of the steam-vessel shall forthwith give notice of the wreck, abandonment, damage, casualty or loss to the officer in charge of the nearest police-station.

31. (1) If in any case a formal investigation into the facts referred to in the last foregoing section appears to the Local Government to be requisite or expedient, the Local Government may appoint a special Court, consisting of not less than two nor more than four persons, and direct the Court to make the investigation, and may fix the place for making the same

Power for Local Government to appoint special Court of Investigation.

(2) One of the members of the Court shall be a Magistrate, another shall be some person conversant with maritime affairs or the navigation of

## (Chapter IV—Investigations into Casualties. Secs. 32-36)

inland steam-vessels, and the other or others (if any) shall be conversant with either maritime or mercantile affairs or with the navigation of inland steam-vessels

Power for principal Court of ordinary criminal jurisdiction to hold investigations into casualties when so directed  
Power for Court of Investigation to inquire into charges against masters, engineers and engine-drivers

32. Any principal Court of ordinary criminal jurisdiction and the Court of any District Magistrate may, when so directed by the Local Government, make the investigation referred to in the last foregoing section.

33. (1) Any Court making an investigation under either of the last two foregoing sections may inquire into any charge of incompetency or misconduct arising in the course of the investigation against any master, engineer or engine-driver, as well as into any charge of a wrongful act or default on his part causing any wreck, abandonment, damage, casualty or loss referred to in section 30.

(2) In every case in which any such charge, whether of incompetency or misconduct, or of a wrongful act or default as aforesaid, arises against any master, engineer or engine-driver in the course of an investigation, the Court shall, before the commencement of the inquiry into the charge, cause to be furnished to him a copy of the report or statement of the case upon which the investigation has been directed

Power for Local Government to direct investigation into charges of incompetency or misconduct.

34. (1) If the Local Government has reason to believe that there are grounds for charging any master, engineer or engine-driver of an inland steam-vessel with incompetency or misconduct, otherwise than in the course of an investigation under section 31 or section 32, it may send a statement of the case to the principal Court of ordinary criminal jurisdiction, or the Court of the District Magistrate, at or nearest to the place at which it may be convenient for the parties and witnesses to attend, and may direct the Court to make an investigation into the charge.

(2) Before commencing the investigation the Court shall cause the master or engineer or engine-driver so charged to be furnished with a copy of the statement sent by the Local Government.

Person accused to be heard.

35. For the purpose of an investigation under this Chapter into any charge against a master, engineer or engine-driver the Court may summon him to appear, and shall give him full opportunity of making a defence, either in person or otherwise

Assessors.

36 (1) When any investigation involves, or appears likely to involve, any question as to the cancelling or suspension of the certificate of a master,

*(Chapter IV.—Investigations into Casualties. Secs. 37-39)*

engineer or engine-driver, the Court making the investigation shall constitute as its assessors, for the purposes of the investigation, two persons having experience in the merchant service or in the navigation of inland steam-vessels, and in every other investigation the Court making it may, if it thinks fit, constitute as its assessor, for the purposes of the investigation, any person conversant with maritime affairs or the navigation of inland steam-vessels and willing to act as assessor.

(2) Every person appointed under this section shall attend during the investigation and deliver his opinion in writing, to be recorded on the proceedings. But the exercise of all powers conferred on the Court by this Act shall rest with the Court

**37.** For the purpose of any investigation under this Chapter the Court making the investigation, so far as relates to compelling the attendance and examination of witnesses and the production of documents and the regulation of the proceedings, shall have—

Powers of Court as to evidence and regulation of proceedings.

- (a) if the Court is a special Court—the same powers as are exercisable by the principal Court of ordinary criminal jurisdiction for the place at which the investigation is made;
- (b) if the Court is a principal Court of ordinary criminal jurisdiction or the Court of the District Magistrate—the same powers as are exercisable respectively by either Court in the exercise of its criminal jurisdiction

**38.** (1) If any Court making an investigation under this Chapter thinks it necessary for obtaining evidence that any person should be arrested, it may issue a warrant for his arrest, and may, for the purpose of effecting the arrest, authorize any officer (subject, nevertheless, to any general or special instructions from the Local Government) to enter any vessel.

Power to arrest witnesses and cause entry and detention of vessels.

(2) Any officer so authorized may, for the purpose of enforcing the entry, call to his aid any officers of Police or Customs, or any other persons, and may seize and detain the vessel for such time as is reasonably necessary to effect the arrest, and every such officer or other person shall be deemed to be a public servant within the meaning of the Indian Penal Code<sup>1</sup>

(3) No person shall be detained by virtue of this section for more than forty-eight hours.

**39.** (1) Whenever in the course of any investigation it appears that any person has committed, within the jurisdiction of any Court in British India,

Power to commit for trial and bind

<sup>1</sup> For Act XLV of 1860, see General Acts, Vol I, Ed 1898, p 240

over witness-  
es.

an offence punishable under any law in force in British India, the Court making the investigation may (subject to such rules consistent with this Act as the High Court may, from time to time, prescribe) cause him to be arrested, or commit him or hold him to bail to take his trial before the proper Court; and may bind over any person to give evidence at the trial, and may, for the purposes of this section, exercise all the powers of a Magistrate of the first-class or of a Presidency Magistrate.

(2) For the purposes of this section the Recorder of Rangoon shall, within <sup>1</sup> [the local limits of the territories for the time being administered by the Chief Commissioner of British Burma,] be deemed to be the High Court.

Depositions.

40. (1) Whenever, in the course of any such trial, the testimony of any witness is required in relation to the subject-matter, any deposition previously made by him in relation to the same subject-matter before any Court making an investigation under this Chapter shall, if authenticated by the signature of the Magistrate or presiding Judge, be admissible in evidence on proof—

(a) that the witness cannot be found within the jurisdiction of the Court before which the trial is held; and

(b) that it was made in the presence of the person accused, and that he had an opportunity of cross-examining the witness.

(2) A certificate by the Magistrate or presiding Judge that the deposition was made in the presence of the accused and that he had that opportunity shall, unless the contrary be proved, be sufficient evidence that it was so made and that he had that opportunity.

Report by  
Court to  
Local Gov-  
ernment.

41. The Court shall, in the case of every investigation under this Chapter, transmit to the Local Government a full report of the conclusions at which it has arrived, together with the evidence.

Power to in-  
vestigate  
causes of ex-  
plosions on  
board inland  
steam-ves-  
sels.

42. (1) Whenever any explosion occurs on board any inland steam-vessel, the Local Government may, if it thinks fit, direct that an investigation into the cause of the explosion be made by such person or persons as it thinks fit.

(2) The person or persons so directed may enter into and upon the steam-vessel, with all necessary workmen and labourers, and remove any portion of the steam-vessel or of the machinery thereof, for the purpose of the in-

<sup>1</sup> For these words read Lower Burma, *see* the Upper Burma Laws Act, 1886 (XX of 1886), s 4, *see* now the Burma Laws Act, 1898 (XIII of 1898), s 7 For Chief Commissioner read now Lieutenant-Governor of Burma, *see* s 15, *ibid*

(Chapter V.—Suspension and Cancellation of Masters' and Engineers' Certificates. Secs. 43-44.)

vestigation, and shall report to the Local Government what in his or their opinion was the cause of the explosion

(3) Every person making an investigation under this section shall be deemed to be a public servant within the meaning of the Indian Penal Code.<sup>1</sup>

## CHAPTER V

### SUSPENSION AND CANCELLATION OF MASTERS' AND ENGINEERS' CERTIFICATES

43. Any certificate granted under this Act to any master, engineer or engine-driver may be suspended or cancelled by the Local Government which granted it or by any other Local Government, in the following cases, that is to say —

Power for Local Government to suspend or cancel certificates in certain cases

(a) if, on any investigation made under this Act, the Court reports that the wreck or abandonment of, or loss or damage to, any inland steam-vessel, or loss of life, has been caused by his wrongful act or default, or that he is incompetent, or has been guilty of any gross act of drunkenness, tyranny or other misconduct; or

(b) if he is proved to have been convicted of any non-bailable offence, or

<sup>2</sup>[(c) if, in the case of a second-class master or serang, or of an engine-driver, the master or serang, or the engine-driver, is or has become, in the opinion of the Local Government, unfit to act as a second-class master or serang, or as an engine-driver, as the case may be.]

Provided that, in any case in which an investigation has been made into a charge against any master, engineer or engine-driver, a certificate shall not be suspended or cancelled under clause (a) of this section unless the Local Government is satisfied that the holder of the certificate has been furnished before the commencement of the investigation with the copy of the report or statement required by section 33 or section 34, as the case may be.

44. Every master, engineer or engine-driver whose certificate is cancelled or suspended under the last foregoing section shall deliver it to

Obligation to deliver up cancelled or

<sup>1</sup> For Act XLV of 1860, see General Acts, Vol I, Ed. 1898, p 240

<sup>2</sup> This clause was substituted for the original cl (c) by s 2 of the Inland Steam-vessels Act (1884) Amendment Act, 1891 (XIII of 1891), printed, General Acts, Vol VI.

(Chapter V.—*Suspension and Cancellation of Masters' and Engineers' Certificates* Secs 45-46. Chapter VI.—*Protection of Inland Steam-vessels from Danger by Fire.* Secs. 47-48.)

suspended  
certificate

Report to  
other Local  
Govern-  
ment.

Power to  
revoke can-  
cellation or  
suspension  
and to grant  
new certifi-  
cate

such person as the Local Government which cancelled or suspended it from time to time directs <sup>1</sup>

45. If the Local Government which cancels or suspends a certificate under section 43 is not the Local Government which granted the certificate, the Local Government so cancelling or suspending the certificate shall report the proceedings, and the fact of cancellation or suspension, to the Local Government which granted the certificate.

46. (1) Any Local Government may, at any time, revoke any order of cancellation or suspension which it may have made under section 43, or grant, without examination, to any person whose certificate it has so cancelled, a new certificate.

(2) A certificate so granted shall have the same effect as if it had been granted after examination.

## CHAPTER VI.

### PROTECTION OF INLAND STEAM-VESSLS FROM DANGER BY FIRE.

47. The Governor General in Council may, from time to time, by notification in the Gazette of India, declare what shall be deemed to be, for the purposes of this Act, dangerous goods <sup>2</sup>

48. (1) A person shall not take with him on board an inland steam-vessel, and a person shall not deliver or tender for carriage on an inland steam-vessel, any dangerous goods without giving notice of their nature to the owner or master of the steam-vessel, or, in the case of goods delivered or tendered for carriage, without distinctly marking their nature on the outside of the package containing the goods.

(2) The owner or master of an inland steam-vessel may refuse to carry upon an inland steam-vessel any luggage or parcel which he suspects to contain dangerous goods, and may require the luggage or parcel to be opened to ascertain the fact previously to carrying the same, and, in case any such luggage or parcel is received for the purpose of being carried in any inland steam-vessel, the owner or master of the vessel may stop the transit thereof until he is satisfied as to the nature of its contents.

<sup>1</sup> For officer appointed under this section for Karachi, see Bombay List of Local Rules and Orders, Ed 1896, Vol I, p cxviii

<sup>2</sup> For notification declaring certain articles to be dangerous goods, see Gazette of India, 1885, Pt I, p. 578

Power for  
Governor  
General in  
Council to  
declare dan-  
gerous goods  
Carriage of  
dangerous  
goods.

(Chapter VI—Protection of Inland Steam-vessels from Danger by Fire  
Secs 49-50 Chapter VII—Carriage of Passengers in Inland Steam-  
vessels Sec 51)

49. Where any dangerous goods have been sent or brought on board any inland steam-vessel in contravention of the last foregoing section, the owner or master of the steam-vessel may, if he thinks fit, cause the goods to be thrown overboard, together with any package or receptacle in which they are contained, and neither the owner nor the master shall, in respect of his having so thrown the goods overboard, be subject to any liability, civil or criminal, in any Court.

Power to  
throw over-  
board dan-  
gerous goods

50. (1) The Local Government may make rules for the protection of inland steam-vessels from danger by explosion or fire<sup>1</sup>

Power for  
Local Gov-  
ernment to  
make rules  
for protec-  
tion of inland  
steam-vessels  
from dan-  
ger by explo-  
sion or fire.

(2) Rules under this section may provide for the following among other matters, that is to say —

- (a) the conditions on, and subject to, which dangerous goods may be carried on board inland steam-vessels,
- (b) the precautions to be taken to prevent explosions or fires on board inland steam-vessels; and
- (c) the apparatus for the purpose of extinguishing fires which is to be kept on board inland steam-vessels

(3) Any rule under this section may contain a provision that any person committing a breach of it shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

## CHAPTER VII.

### CARRIAGE OF PASSENGERS IN INLAND STEAM-VESSELS

51. (1) The Local Government may make rules<sup>2</sup> to regulate the carriage of passengers in inland steam-vessels

Power for  
Local Gov-  
ernment to  
make rules  
for the regu-  
lation of the  
carriage of  
passengers  
in inland  
steam-  
vessels

(2) Rules under this section may provide for the following among other matters, that is to say —

- (a) the cases in which passengers may be refused admission to, or may be required to leave, inland steam-vessels,

<sup>1</sup> For rules for the protection of inland steam-vessels from danger by explosion from fire in—

(a) Assam, see Assam Rules Manual, Ed 1893, pp 227-230;

(b) Bengal, see Calcutta Gazette, 1898, Pt I, p 133

(c) Bombay, see Bombay List of Local Rules and Orders, Ed 1896, Vol I, p cxviii

<sup>2</sup> For rules made for the carriage of passengers in such vessels in—

(a) Burma, see Burma Gazette, 1897, p 468,

(b) Bombay, see Bombay List of Local Rules and Orders, Ed 1896, Vol I, p cxviii.

(Chapter VII—*Carriage of Passengers in Inland Steam-vessels* Sec 51A.

Chapter VIII—*Penalties and Legal Proceedings* Sec 52.)

(b) the payment of fares and the exhibition of tickets or receipts (if any) showing the payment of their fares by passengers in inland steam-vessels; and

(c) the regulation generally of the conduct of passengers in inland steam-vessels.

(3) Any rule under this section may contain a provision that any person committing a breach of it shall be punished with fine which may extend to twenty rupees

(4) The master or any other officer of an inland steam-vessel, and any person called by him to his assistance, may arrest any person who has committed a breach of any rule made under this section, and whose name and address are unknown to the master or other officer

(5) The procedure prescribed by section 59 of the Code of Criminal Procedure<sup>1</sup> in the case of arrest by private persons shall apply to every arrest under this section.

Power for Local Government to make rules for protection of passengers

2 51A. (1) The Local Government may also make<sup>3</sup> rules for the protection of passengers in inland steam-vessels, and may by such rules require, among other matters, a sufficient quantity of fresh water to be provided free of charge in such vessels for the use of passengers, and the prices of passenger-tickets to be printed or otherwise denoted on such tickets

(2) Any rule under this section may contain a provision that any owner, master or passenger committing a breach of it shall be punished with fine which may extend to fifty rupees.

## CHAPTER VIII

### PENALTIES AND LEGAL PROCEEDINGS

Penalty for inland steam-vessel making a voyage without certificate of survey.

52. (1) If any inland steam-vessel proceeds on a voyage in contravention of section 6, the owner and master of the steam-vessel shall each be liable to a fine which may extend to one thousand rupees

(2) If the master or any other officer on board of an inland steam-vessel which proceeds on a voyage in contravention of section 6 is a licensed pilot, he shall be liable to have his license as a pilot cancelled, or suspended for

<sup>1</sup> See now the Code of Criminal Procedure, 1898 (Act V of 1898)

<sup>2</sup> S 51A was added by s 12 of the Indian Steam-ships Law Amendment Act, 1890 (III of 1890), printed, General Acts, Vol V, Ed 1898, p 368

<sup>3</sup> For rules made for the protection of passengers in such vessels in—

(a) Burma, see Burma Gazette, 1891, p 436

(b) Bombay, see Bombay List of Local Rules and Orders, Ed 1896, Vol I, p cxviii.

any period, by the Local Government, as the Local Government sees fit to order.

53. If the certificate of survey granted under this Act is not kept affixed in an inland steam-vessel in the manner provided by this Act,<sup>1</sup> the owner and master of the steam-vessel shall each be liable to a fine which may extend to one hundred rupees.

Penalty for neglect to affix certificate of survey in inland steam-vessel

54. If the owner or master of an inland steam-vessel, without reasonable cause, neglects or refuses to deliver up a certificate of survey when required under this Act<sup>2</sup> to do so, he shall be punished with fine which may extend to one hundred rupees.

Penalty for neglect or refusal to deliver up certificate of survey

54A. If an inland steam-vessel has on board thereof or on or in any part thereof a number of passengers which is greater than the number of passengers set forth in the certificate of survey as the number which the vessel or the part thereof is, in the judgment of the surveyor, fit to carry, the owner and master shall, for every passenger over and above that number, be each liable to a fine which may extend to ten rupees

Penalty for having excessive number of passengers on board

55. (a) If any person who has been engaged to serve as master, engineer or engine-driver of an inland steam-vessel proceeds on any voyage in that steam-vessel as master, engineer or engine-driver, as the case may be, without being at the time entitled to, and possessed of, the certificate required under this Act, and

Penalty for serving, or engaging a person to serve, as master, engineer or engine-driver without certificate

(b) if any person employs any person as a master, engineer or engine-driver of an inland steam-vessel without ascertaining that he is at the time entitled to, and possessed of, the master's, engineer's or engine-driver's certificates, as the case may be, required under this Act,

he shall be punished with fine which may extend to five hundred rupees.

56. If any master wilfully fails to give notice, as required by section 30, of any wreck, abandonment, damage, casualty or loss, he shall be punished with fine which may extend to five hundred rupees, and, in default of payment<sup>4</sup> [with simple imprisonment] for a term which may extend to three months.

Penalty for master failing to give notice of wreck or casualty

57. If any master, engineer or engine-driver whose certificate is cancelled or suspended under this Act, fails to deliver the certificate to such

Penalty for master, engineer or engine-driver

<sup>1</sup> See s 13, *supra*

<sup>2</sup> See s 16, *supra*

<sup>3</sup> S 54A was inserted by s 13 of the Indian Steam-ships Law Amendment Act, 1890 (III of 1890), printed, General Acts, Vol V

<sup>4</sup> These words were substituted for the words "to simple imprisonment" by Sch II to the Repealing and Amending Act, 1891 (XII of 1891), printed, General Acts, Vol VI

failing to  
 deliver up  
 cancelled or  
 suspended  
 certificate  
 Penalty for  
 taking dan-  
 gerous goods  
 on board  
 inland steam-  
 vessel with-  
 out notice

Penalty for  
 misconduct  
 endangering  
 inland steam-  
 vessel or life  
 or limb.

person as the Local Government which cancelled or suspended it directs, he shall be punished with fine which may extend to five hundred rupees.

58. If any person, in contravention of section 48, takes with him on board any inland steam-vessel any dangerous goods, or delivers or tenders any such goods for the purpose of being carried on any inland steam-vessel, he shall be punished with fine which may extend to two hundred rupees, and the goods shall be forfeited to Her Majesty.

59. If any person employed or engaged in any capacity on board an inland steam-vessel, by wilful breach of duty, or by neglect of duty, or by reason of drunkenness—

(a) does any act tending to the immediate wreck, destruction or material damage of the vessel, or tending immediately to endanger the life or limb of any person belonging to, or on board, the vessel, or

(b) refuses or omits to do any lawful act proper and requisite to be done by him for preserving the vessel from immediate wreck, destruction or material damage, or for preserving any person belonging to, or on board of, the vessel from immediate danger to life or limb,

he shall be punished with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to two years, or with both.

Distress of  
 inland steam-  
 vessel.

60. Where the owner or master of an inland steam-vessel is convicted of an offence under this Act or the rules made under this Act committed on board of, or in relation to, that steam-vessel, and sentenced to pay a fine, the Magistrate may, in addition to any other power he may have for the purpose of compelling payment of the fine, direct the amount thereof to be levied by distress and sale of the vessel and the tackle, apparel and furniture thereof, or so much thereof as is necessary.

Jurisdiction  
 of Magis-  
 trates.

61. Except in the case of offences under rules made under section 51, no Magistrate shall try an offence under this Act, or the rules under it, unless he is a Presidency Magistrate, or a Magistrate whose powers are not less than those of a Magistrate of the first class

Place of  
 trial.

62. If any person commits an offence against this Act or the rules made under this Act, he shall be triable for the offence in any place in which he may be found or which the Local Government, from time to time, by notification in the official Gazette, directs in this behalf, or in any other

place in which he might be tried under any other law for the time being in force

63. Nothing in this Act shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or the rules made under this Act, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act or the rules made under this Act:

Saving of prosecutions under other acts

Provided that a person shall not be punished twice for the same offence.

## CHAPTER IX.

### SUPPLEMENTAL.

64. The Local Government may, from time to time, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, declare that all or any of the provisions of Chapters II and III of this Act shall not apply in the case of any specified class of steam-vessels, or shall apply to them with such modifications as the Local Government prescribes<sup>1</sup>

Power for Local Government to exempt certain inland steam-vessels from Chapters II and III

65. The Local Government may, from time to time, by notification in the official Gazette, define how much of any tidal water shall be deemed to be an inland water for the purposes of this Act.<sup>2</sup>

Power for Local Government to define tidal water

66. All fees payable under this Act may be recovered as fines under this Act

Fees recoverable as fines.

67. Nothing in this Act, or in any rule made under this Act, shall apply to any steam-vessel belonging to, or in the service of, Her Majesty or the Government of India

Exemption of Government vessels.

68. Every master of an inland steam-vessel who possesses a master's certificate duly granted under this Act and then in force shall, in ports to which section 38 of the Indian Ports Act, 1875,<sup>3</sup> has been extended, be deemed,

Certificated masters of inland steam-vessels to be deemed pilots

XII of 1875.

<sup>1</sup> (1) For notification exempting inland steam-vessels which do not ply for hire for passenger-traffic or such vessels as cannot carry more than 12 passengers from the provisions of Ch II of the Act, in—

(a) Assam, *see* Assam Rules Manual, Ed 1893, p 217,

(b) Bombay, *see* Bombay List of Local Rules and Orders, Ed 1896, pp cxviii and cxix

(2) For notification declaring that Ch III shall apply to steam-vessels plying on the river Indus, *see* Bombay List of Local Rules and Orders, Ed 1896, Vol I, p cxviii

<sup>2</sup> For notification by the Government of Bombay under this section, *see* Bombay List of Local Rules and Orders, Ed 1896, Vol I, p cxix

<sup>3</sup> *See now* s 31 of the Indian Ports Act, 1889 (X of 1889), by which Act XII of 1875 has been repealed For Act X of 1889, *see* General Acts, Ed 1898, Vol V, p 297.

(Chapter IX.—*Supplemental Sec 69 The First Schedule.—Acts repealed.*)

under Ports  
Act

for the purposes of that section, to be the pilot of the steam-vessel of which he is in charge.

(2) Nothing in this section shall be deemed to affect the provisions of Bombay Act I of 1863<sup>1</sup> which require persons in charge of vessels passing through any of the channels or tidal channels at the mouths of the river Indus to pay fees for pilotage.

Procedure  
for making,  
publication  
and confirm-  
ation of  
rules

69. (1) A Local Government making rules under this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made in such manner as the Governor General in Council, from time to time, by notification in the Gazette of India prescribes<sup>2</sup>

(3) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration

(4) The Local Government shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) A rule made under this Act shall not take effect until it has been sanctioned by the Governor General in Council and published in the local official Gazette.

(6) The publication in the Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made and sanctioned

(7) All powers to make rules conferred by this Act may be exercised from time to time as occasion requires.

### THE FIRST SCHEDULE.

#### ACTS REPEALED.

(See section 3)

(a) *Acts of the Governor General in Council.*

Number and year.	Subject or short title.	Extent of repeal.
XVI of 1871	The Burmese Steamer Survey Act	The whole.

<sup>1</sup> Printed, Bombay Code, Ed 1896, Vol II, p 13

<sup>2</sup> For notification issued under this clause, see Gazette of India, 1885, Pt 1, p. 578, and *ibid*, 1881, Pt. I, p. 425.

## (The Second Schedule.—Rates of Fees)

## THE FIRST SCHEDULE—concluded

## (b) Acts of the Governor of Bombay in Council.

Number and year.	Subject or short title	Extent of repeal
II of 1864 . . .	To provide for the periodical survey of steam-vessels in the ports, harbours, rivers or waters of the Presidency of Bombay.	The whole, except section 15.
IV of 1873 . . .	To amend Bombay Act II of 1864, providing for the periodical survey of steam-vessels, and to provide for the examination of engineers of steam-vessels	The whole

## (c) Acts of the Lieutenant-Governor of Bengal in Council

Number and year.	Subject or short title.	Extent of repeal
V of 1862 . . .	To provide for the periodical survey of steam-vessels in the port of Calcutta	The whole.
I of 1868 . . .	The Steam-boat Survey Amendment Act, 1868	So much as has not been repealed.
III of 1871 . . .	To increase the fees for the survey of steam-vessels	The whole.
VII of 1879 . . .	To provide for the proper management of certain inland steam-vessels.	The whole.

## THE SECOND SCHEDULE

## RATES OF FEES.

(See section 8A<sup>1</sup>)

		Tons.	Rs
For steam-vessels of less than	. . . . .	100	25
" "	100 tons and up to . . . . .	200	40
" "	200 " " " . . . . .	350	50
" "	350 " " " . . . . .	700	60
" "	700 " " " . . . . .	1 000	80
" "	1,000 " " " . . . . .	1,500	100
" "	1,500 " and upwards . . . . .		120

<sup>1</sup> This reference was substituted for the reference to s 12 by s 14 of the Indian Steamships Law Amendment Act, 1890 (III of 1890), printed, General Acts, Ed 1898, Vol V, p 368

## THE INDIAN STEAM-SHIPS ACT, 1884.

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CONTENTS.

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## CHAPTER I

## PRELIMINARY.

## SECTIONS.

- 1 Short title  
Extent.
  2. Commencement.
  3. Definitions
- 

## CHAPTER II

## SURVEY OF STEAM-SHIPS.

4. Steam-ship not to carry passengers without a certificate of survey.
- 5 Exception of certain steam-ships
6. Penalty for carrying passengers without certificate of survey.
7. No port-clearance until certificate of survey produced
8. Power to detain steam-ship not having certificate of survey.
9. Appointment of surveyors and ports of survey.
10. Powers of surveyor
- 10A. Fees in respect of surveys.
11. Declaration of surveyor
12. Sending of declaration by owner or master to Local Government.
13. Grant of certificate of survey by Local Government
14. [*Repealed*]
15. Certificate of survey to be affixed in conspicuous part of steam-ship.
16. Term of certificates of survey.
17. Cancellation or suspension of certificate of survey by Local Government.
18. Power to require delivery of expired or cancelled certificates of survey.
19. Report of cancellation or suspension of certain certificates.
20. Power for Local Government to direct that two surveyors be employed.
21. Power for Local Government to order a second survey.
22. Division of duties when two surveyors employed.
23. Survey of foreign steam-ships.
24. Power for Local Government to make rules as to surveys
25. Power for Local Government to exempt certain steam-ships.

## CHAPTER III.

## EXAMINATION AND CERTIFICATES OF ENGINEERS AND ENGINE-DRIVERS.

## SECTIONS

- 26 Appointment of examiners
  - 27 Grant of engineers' and engine-drivers' certificates of competency.
  - 28 Power for Local Government to cancel engine-drivers' certificates.
  - 29 Certificates to be made in duplicate
  - 30 Copy of certificate to be granted in certain cases.
  31. Steam-ships required to carry first-class and second-class engineers
  32. Power for Local Government to require certain steam-ships to carry engine-drivers.
  33. Exemption of inland steam-vessels.
  - 34 Penalty for serving, or engaging a person to serve, as engineer or engine-driver without a certificate
  35. Production of certificates.
  36. Power for Local Government to make rules as to grant of certificates of competency.
- 

## CHAPTER IV.

## INVESTIGATIONS INTO EXPLOSIONS

37. Power to investigate causes of explosions on board steam-ships.
- 

## CHAPTER V.

## SUPPLEMENTAL.

38. Jurisdiction of Magistrate.
  39. Place of trial.
  40. Distress of steam-ship.
  41. [*Repealed* ]
  42. Procedure for making, publication and confirmation of rules.
- 

## THE SCHEDULE—RATES OF FEES.

ACT No. VII OF 1884.<sup>1</sup>

[29th February, 1884]

An Act to amend the law relating to the Survey of Steam-ships  
and the grant of Certificates to Engineers of those Ships.

WHEREAS it is expedient to amend the law relating to the survey of steam-ships and the grant of certificates<sup>2</sup> to engineers of those ships; It is hereby enacted as follows:—

## CHAPTER I.

### PRELIMINARY.

Short title	1. (1) This Act may be called the Indian Steam-ships Act, 1884; and
Extent.	(2) It extends to the whole of British India.
Commencement	2. (1) This Act shall come into force on such day <sup>3</sup> as the Governor General in Council, by notification in the Gazette of India, appoints.
	(2) [ <i>Rep. by the Repealing and Amending Act, 1891 (XII of 1891).</i> <sup>4</sup> ]
Definitions.	3. In this Act, unless there is something repugnant in the subject or context,—
	(1) “steam-ship” means every description of vessel used in navigation and propelled wholly or in part by the agency of steam.
	(2) “British steam-ship” includes a steam-ship registered under Act XIX of 1838, <sup>5</sup> Act X of 1841 <sup>6</sup> or Act XI of 1850, <sup>6</sup> or under any other law passed by the Governor General in Council and for the time being in force for the registration of ships in India:
	(3) “master” means any person (except a pilot or harbour-master) having for the time being control or charge of a steam-ship:
	(4) “passenger” includes any person carried in a steam-ship other than the master and crew and the owner, his family and servants: and
	(5) “prescribed” means prescribed by a rule made by the Local Government under this Act.

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1883, Pt. V, p. 245; for Proceedings in Council, see *ibid.*, Supplement, pp. 307 and 763, and *ibid.*, 1884, Supplement, p. 392.

<sup>2</sup> As to validation of “Indian Foreign Trade Certificates of competency” granted in Bombay to engineers of steam-ships, see s. 2 of the Engineer’s Certificates Validation Act, 1894 (XV of 1894).

<sup>3</sup> Act VII of 1884 came into force on the 1st December, 1885, see Gazette of India, 1885, Pt. I, p. 577.

<sup>4</sup> Printed, General Acts, Vol. VI.

<sup>5</sup> Printed, Bombay Code, Ed. 1894, Vol. I, p. 55.

<sup>6</sup> Printed, General Acts, Vol. I, Ed. 1898, pp. 19 and 59, respectively.

CHAPTER II<sup>1</sup>

## SURVEY OF STEAM-SHIPS.

4. A steam-ship shall not carry more than twelve passengers between places in British India, and

a British steam-ship shall not carry more than twelve passengers to or from any place in British India from or to any place out of British India,

unless she has a certificate of survey under this Act in force and applicable to the voyage on which she is about to proceed, or the service on which she is about to be employed.

Steam-ship  
not to carry  
passengers  
without a  
certificate of  
survey.

5. Nothing in the last foregoing section shall apply to—

(a) any steam-ship having a certificate of survey granted by the Board of Trade or any British Colonial Government, unless it appears from the certificate that it is inapplicable to the voyage on which the steam-ship is about to proceed, or the service on which she is about to be employed, or unless there is reason to believe that the steam-ship has, since the grant of the certificate, sustained injury or damage, or been found unseaworthy or otherwise inefficient; or

Exception  
of certain  
steam-ships.

(b) any steam-ship having a certificate of survey granted under the Inland Steam-vessels Act, 1884,<sup>2</sup> in force and applicable to the voyage on which the steam-ship is about to proceed, or the service on which she is about to be employed; or

(c) any steam-ship belonging to, or in the service of, Her Majesty or the Government of India, or

(d) any steam-ship belonging to any foreign Prince or State when employed mainly on the public service of the Prince or State; or

(e) any steam-ship carrying passengers during the interval between the time at which her certificate of survey under this Act expires and the time at which it is first practicable to have the certificate renewed.

6. (1) If any steam-ship carries or attempts to carry passengers in contravention of section 4, the owner and master of the steam-ship shall each be liable to a fine which may extend to one thousand rupees.

Penalty for  
carrying  
passengers  
without  
certificate  
of survey.

<sup>1</sup> For power to exempt steam-ships from Ch II, or to modify the chapter, see s 25, *infra*

<sup>2</sup> Printed, *supra*, p 713

## (Chapter II—Survey of Steam-ships. Secs 7-10)

(2) If the master or any other officer of any steam-ship which carries or attempts to carry passengers in contravention of section 4 is a licensed pilot, he shall be liable to have his license as a pilot cancelled or suspended for any period by the Local Government as the Local Government sees fit to order

No port-clearance until certificate of survey produced

7. No officer of Customs shall grant a port-clearance, nor shall any pilot be assigned, to any steam-ship for which a certificate of survey is required by section 4, until after the production by the owner or master thereof of a certificate under this Act in force and applicable to the voyage on which she is about to proceed and the service on which she is about to be employed.

Power to detain steam-ship not having certificate of survey

8. If any steam-ship for which a certificate of survey is required by section 4 leaves or attempts to leave any port of survey without a certificate, any officer of Customs or any pilot on board the steam-ship may detain her until she obtains a certificate.

Appointment of surveyors and ports of survey.

9. (1) The Local Government may, from time to time, appoint so many persons as it thinks fit to be surveyors for the purposes of this Act at such ports within the territories under its administration as it, from time to time, appoints to be ports of survey<sup>1</sup>

(2) Every surveyor appointed under this Act may be suspended or removed by the Local Government which appointed him.

(3) Every surveyor appointed under this Act shall, for the purposes of any survey made by him, be deemed to be a public servant within the meaning of the Indian Penal Code.<sup>2</sup>

XLV of 1860

Powers of surveyor.

10. (1) For the purposes of a survey under this Act, any surveyor appointed under this Act may, at any reasonable time, go on board a steam-ship and may inspect the steam-ship and every part thereof, and the machinery, equipments or articles on board thereof

Provided that he does not unnecessarily hinder the loading or unloading of the steam-ship, or unnecessarily detain or delay her from proceeding on any voyage.

(2) The owner, master and officers of the steam-ship shall afford to the surveyor all reasonable facilities for a survey, and all such information respecting the steam-ship and her machinery, and equipments, or any part thereof, respectively, as he reasonably requires

<sup>1</sup> For ports of survey and surveyors for such ports appointed for the Presidency of Bombay, see Bombay List of Local Rules and Orders, Ed 1896, Vol. I, p. cxix

<sup>2</sup> Printed, General Acts, Vol I, Ed 1898, p 240

## (Chapter II—Survey of Steam-ships Secs. 10A-11)

1 10A. Before a survey under this Act is commenced, the owner or master of the steam-ship to be surveyed shall pay to such officer as the Local Government, from time to time, appoints in this behalf—

Fees in respect of surveys.

- (a) a fee calculated on the tonnage of the steam-ship according to the rates in the schedule hereto annexed or according to any other prescribed rates; and
- (b) when the survey is to be made in any port of survey other than Calcutta, Madras, Bombay or Rangoon, such additional fee, in respect of the expense (if any) of the journey of the surveyor to the port, as the Local Government, from time to time, by notification in the official Gazette, directs.

11. When a survey under this Act is completed, the surveyor making it shall forthwith, if satisfied that he can with propriety do so, give to the owner or master of the steam-ship surveyed a declaration in the prescribed form containing the following particulars, namely—

Declaration of surveyor.

- (a) that the hull and machinery of the steam-ship are sufficient for the service intended and in good condition;
- (b) that the equipments of the steam-ship and the certificates of the master, mate or mates, and engineer or engineers or engine-driver, are such and in such condition as are required by any law for the time being in force and applicable to the steam-ship;
- (c) the time (if less than one year) for which the hull, machinery and equipments of the steam-ship will be sufficient;
- (d) the limit (if any) beyond which, as regards the hull, machinery or equipments, the steam-ship is in the surveyor's judgment not fit to ply;
- (e) the number of passengers which the steam-ship is, in the judgment of the surveyor, fit to carry, distinguishing, if necessary, between the respective numbers to be carried on the deck and in the cabins and in different parts of the deck and cabins; the number to be subject to such conditions and variations, according to the time of year, the nature of the voyage, the cargo carried or other circumstances, as the case requires; and
- (f) any other prescribed particulars.

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<sup>1</sup> S 10A was inserted by s 15 of the Indian Steam-ships Law Amendment Act, 1890 (III of 1890), printed, General Acts, Vol V, Ed 1898, p 368

## (Chapter II.—Survey of Steam-ships. Secs. 12-13.)

Sending of  
declaration  
by owner or  
master to  
Local Gov-  
ernment.

12. (1) The owner or master to whom a declaration is given under the last foregoing section shall, within fourteen days after the date of the receipt thereof, send the declaration to such officer as the Local Government, from time to time, appoints in this behalf.

(2) If he fails to do so, he shall forfeit a sum not exceeding five rupees for every day during which the sending of the declaration is delayed.

(3) The owner or master shall pay the sum so forfeited on the delivery of the certificate of survey \* \* \* \*<sup>1</sup>

Grant of cer-  
tificate of  
survey by  
Local Gov-  
ernment.

13. (1) Upon receipt of a declaration by the officer appointed in this behalf under the last foregoing section, the Local Government shall, if satisfied that the provisions of this Act have been complied with, cause a certificate in duplicate to be prepared and delivered, through such officer at the port at which the steam-ship was surveyed as the Local Government, from time to time, appoints in this behalf, to the owner or master of the steam-ship surveyed, on his applying and paying the \* \* \*<sup>2</sup> sums (if any) mentioned in this Act as payable on delivery of a certificate.

(2) A certificate granted under this section shall be in such form as the Governor General in Council, from time to time, directs; shall contain a statement to the effect that the provisions of this Act with respect to the survey of the steam-ship and the transmission of the declaration in respect thereof have been complied with; and shall set forth—

(a) the particulars concerning the steam-ship which clauses (c), (d) and (e) of section 11 require the declaration by the surveyor to contain, and

(b) any other prescribed particulars.

(3) When a certificate is ready for delivery under this section, the Local Government shall cause notice thereof to be given by post or otherwise to the owner or master of the steam-ship to which the certificate relates

<sup>3</sup>(4) The Local Government may, from time to time, delegate,—

(a) with the previous sanction of the Governor General in Council, to any person, by name or as holding an office, the function, assigned to the Local Government by sub-section (1), of granting a certificate of survey under that sub-section;<sup>4</sup>

<sup>1</sup> The words "in addition to the fee payable for the certificate" were repealed by s. 16 of the Indian Steam-ships Law Amendment Act, 1890 (III of 1890), printed, General Acts, Vol. V, Ed. 1898, p. 368

<sup>2</sup> The words "fees and other" were repealed by s. 17 (1) of the Indian Steam-ships Law Amendment Act, 1890 (III of 1890)

<sup>3</sup> Sub-sec. (4) was added to s. 13 by s. 17 (2) of the Indian Steam-ships Law Amendment Act, 1890 (III of 1890)

<sup>4</sup> For officers to whom the function of granting certificates under this section have been delegated in the Presidency of Bombay, see Bombay List of Local Rules and Orders, Ed. 1896, Vol. I, p. cxix.

## (Chapter II—Survey of Steam-ships Secs 15-17)

- (b) of its own authority, to any person, by name or as holding an office, the function, assigned to the Local Government by sub-section (3), of causing notice to be given of a certificate of survey being ready for delivery:<sup>1</sup>

Provided, with respect to clause (a) of this sub-section, that no delegation of the function mentioned in that clause shall be construed to authorise the grant of a certificate of survey by the surveyor who gave the declaration of survey under section 11.

14. [*Fees for certificates of survey*] *Rep by the Indian Steam-ships Law Amendment Act, 1890 (III of 1890), s 18.*<sup>2</sup>

15. (1) The owner or master of every steam-ship for which a certificate of survey has been granted under this Act shall forthwith, on the receipt of the certificate, cause one of the duplicates thereof to be affixed, and kept affixed so long as the certificate remains in force and the steam-ship is in use, on some conspicuous part of the steam-ship where it may be easily read by all persons on board thereof.

Certificate of survey to be affixed in conspicuous part of steam-ship

(2) If the certificate is not so kept affixed, the owner and master of the steam-ship shall each be liable to a fine which may extend to one hundred rupees

16. A certificate of survey granted under this Act shall not be in force—

Term of certificates of survey.

- (a) after the expiration of one year from the date thereof; or
- (b) after the expiration of the period, if less than one year, for which the hull, boilers, engines or any of the equipments have been stated in the certificate to be sufficient; or
- (c) after notice has been given, by the Local Government, to the owner or master of the steam-ship to which the certificate relates, that the Local Government has cancelled or suspended it.

17. Any certificate of survey granted under this Act may be cancelled or suspended by a Local Government if it has reason to believe—

Cancellation or suspension of certificate of survey by Local Government.

- (a) that the declaration by the surveyor of the sufficiency and good condition of the hull, boilers, engines or any of the equipments of the steam-ship has been fraudulently or erroneously made; or
- (b) that the certificate has otherwise been issued upon false or erroneous information, or

<sup>1</sup> For officers to whom the functions conferred by this section have been delegated in the Presidency of Bombay, see Bombay List of Local Rules and Orders, Ed 1896, Vol I, p cxx

<sup>2</sup> Printed, General Acts, Vol V, Ed 1898, p 368

## (Chapter II—Survey of Steam-ships Secs. 18-22.)

(c) that, since the making of the declaration, the hull, boilers, engines or any of the equipments of the steam-ship have sustained any injury, or have otherwise become insufficient.

Power to require delivery of expired or cancelled certificates of survey

18. (1) The Local Government may require any certificate of survey granted under this Act which has expired, or has been cancelled or suspended, to be delivered up to such person as it, from time to time, directs.

(2) If the owner or master of a steam-ship, without reasonable cause, neglects or refuses to deliver up a certificate as required under this section, he shall be punished with fine which may extend to one hundred rupees.

Report of cancellation or suspension of certain certificates

19. If the Local Government which cancels or suspends a certificate of survey granted under this Act is not the Local Government which <sup>1</sup>[or whose delegate] granted the certificate, the Local Government cancelling or suspending the certificate shall report the fact of cancellation or suspension, together with the reasons therefor, to the Local Government which <sup>1</sup>[or whose delegate] granted the certificate

Power for Local Government to direct that two surveyors be employed

20. A survey under this Act shall ordinarily be made by one surveyor, but two surveyors may be employed if the Local Government, by order in writing, so directs, either generally in the case of all steam-ships at any port of survey, or specially in the case of any particular steam-ship or class of steam-ships at any such port

Power for Local Government to order a second survey.

21. (1) If the surveyor or surveyors making a survey under this Act refuses or refuse to give a declaration under section 11 with regard to any steam-ship, or gives or give a declaration with which the owner or master of the steam-ship surveyed is dissatisfied, the Local Government may, on the application of the owner or master, <sup>2</sup>[and the payment by him of such fee, not exceeding twice the amount of the fee for the previous survey, as the Local Government may require,] direct two other surveyors appointed under this Act to survey the steam-ship.

(2) The surveyors so directed shall forthwith survey the steam-ship, and may, after the survey, either refuse to give a declaration or give such declaration as under the circumstances seems to them proper; and their decision shall be final.

Division of duties when two surveyors employed.

22. When a survey is made under either of the last two foregoing sections by two surveyors, each of the surveyors making the survey shall perform a prescribed portion of the duties assigned by this Act or the rules made under this Act to a surveyor making a survey.

<sup>1</sup>These words in s 19 were inserted by s 19 of the Indian Steam-ships Law Amendment Act, 1890 (III of 1890), printed, General Acts, Vol V, Ed 1898, p 368

<sup>2</sup>These words in s. 21 (1) were inserted by s 20 of the Indian Steam-ships Law Amendment Act, 1890 (III of 1890)

23. When a foreign steam-ship requires to be furnished with a certificate of survey under this Act, and the Local Government is satisfied, by the production of a certificate of survey attested by a British Consular Officer at the port of survey, that the ship has been officially surveyed at a foreign port, and that the requirements of this Act are proved by that survey to have been substantially complied with, the Local Government may, if it thinks fit, dispense with any further survey of the ship in respect of the requirements so complied with, and give a certificate which shall have the same effect as a certificate given after survey under this Act:

Survey of  
foreign  
steam-ships.

Provided that this section shall not apply in the case of an official survey at any foreign port with respect to which Her Majesty has by Order in Council directed that section 19<sup>1</sup> of the Merchant Shipping Act, 1876, shall not apply

39 & 40 Vict.,  
c 80

24. (1) The Local Government may make rules<sup>2</sup> to regulate the making of surveys under this Act.

Power for  
Local Gov-  
ernment to  
make rules  
as to sur-  
veys

(2) Rules under this section may, among other matters,—

- (a) declare the times and places at which, and the manner in which, surveys are to be made;
- (b) regulate the duties of the surveyor making a survey and, where two surveyors are employed, assign the respective duties of each of the surveyors employed;
- (c) declare the form in which the declarations of surveyors and certificates of survey under this Act are to be framed, and the nature of the particulars which are to be stated therein, respectively; and
- (d) fix the rates according to which the fees payable<sup>3</sup> [in respect of surveys] are to be calculated in the case of all or any, of the ports of survey within the territories under its administration.

25. The Local Government may, from time to time, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, declare that all or any of the provisions of this chapter shall not apply in the case of any specified class of steam-ships, or shall apply to them with such modifications as the Local Government prescribes.

Power for  
Local Gov-  
ernment to  
exempt cer-  
tain steam-  
ships.

<sup>1</sup> See now the Merchant Shipping Act, 1894 (57 & 58 Vict., c 60), by which this Act has been repealed.

<sup>2</sup> For rules regulating the making of surveys at certain ports in the Presidency of Bombay, see Bombay List of Local Rules and Orders, Ed 1896, Vol I, p cxx

<sup>3</sup> These words in s 24, cl (d), were substituted for the words "for certificates of survey" by s. 21 of the Indian Steam-ships Law Amendment Act, 1890 (III of 1890), printed, General Acts, Vol V, Ed 1898, p 368

(Chapter III.—*Examination and Certificates of Engineers and Engine-drivers Secs 26-31.*)

### CHAPTER III.

#### EXAMINATION AND CERTIFICATES OF ENGINEERS AND ENGINE-DRIVERS.

Appointment  
of examiners.

26. The Local Government may, from time to time,<sup>1</sup> appoint persons for the purpose of examining the qualifications of persons desirous of obtaining certificates of competency as engineers or engine-drivers.

Grant of en-  
gineers' and  
engine-  
drivers' cer-  
tificates of  
competency

27. (1) The Local Government shall grant to every person who is reported by the examiners to possess the necessary qualifications a certificate of competency to the effect that he is competent to act as a first-class engineer or as a second-class engineer, or as an engine-driver, as the case may be:

Provided that the Local Government may, in any case in which it has reason to believe that the report has been unduly made, require, before granting a certificate, a re-examination of the applicant or a further inquiry into his testimonials and character.

(2) Every certificate granted under this section shall be in the prescribed form.

Power for  
Local Gov-  
ernment to  
cancel en-  
gine-drivers'  
certificates

28. Notwithstanding anything contained in the Indian Merchant Shipping Act, 1883,<sup>2</sup> or any other law for the time being in force, the Local Government may at any time, without any formal investigation, suspend or cancel any engine-driver's certificate granted by it under this Act, if, in its opinion, the holder is, or has become, unfit to act as an engine-driver. V of 1883,

Certificates to  
be made in  
duplicate

29. Every certificate of competency granted under this Act shall be made in duplicate, and one copy shall be delivered to the person entitled to the certificate, and the other shall be kept and recorded in the prescribed manner.

Copy of cer-  
tificate to be  
granted in  
certain cases

30. Whenever an engineer or engine-driver proves to the satisfaction of the Local Government which granted his certificate that he has, without fault on his part, lost or been deprived of it, a copy of the certificate to which, by the record kept as provided by law, he appears to be entitled shall be granted to him, and shall have all the effect of the original.

Steam-ships  
required to  
carry first  
class and  
second class  
engineers.

31. (1) A British steam-ship shall not proceed from any port in British India to any port or place not being either in British India, or on the continent of India, or in the Island of Ceylon, unless she has,—

(a) if the steam-ship has engines of one hundred nominal horse-power

<sup>1</sup> For examiners appointed for the ports of Karachi and Bombay in the Presidency of Bombay, see Bombay List of Local Rules and Orders, Ed 1896, Vol I, p cxx.

<sup>2</sup> Printed, *supra*, p 644

or upwards, as her first and second engineers two certificated engineers, the first possessing a first-class engineer's certificate and the second a second-class engineer's certificate or a certificate of the higher grade, granted under this Act or the Merchant Shipping Acts, 1854 to 1883,<sup>1</sup> or to which the provisions of any such Act have been made applicable under the Merchant Shipping (Colonial) Act, 1869;<sup>1</sup>

- (b) if the steam-ship has engines of under one hundred nominal horse-power, as her only or first engineer an engineer possessing a second-class engineer's certificate or a certificate of the higher grade of the nature referred to in clause (a).

(2) A foreign steam-ship having engines of fifty nominal horse-power or upwards shall not carry passengers from any port in British India to any other port in British India, and a British steam-ship having engines of a like horse-power shall not proceed from any port in British India, to any other port in British India, or to any port or place on the continent of India, or in the Island of Ceylon, unless she has, as her only or first engineer, an engineer possessing a second-class engineer's certificate or a certificate of the higher grade of the nature referred to in clause (a) of sub-section (1).

32. (1) On and from such day as the Local Government,<sup>2</sup> by notification in the official Gazette, directs in this behalf, a foreign steam-ship having engines of under fifty nominal horse-power shall not carry passengers from any port within the territories administered by that Local Government to any other port in British India, and a British steam-ship having engines of a like horse-power shall not proceed from any port within those territories to any other port in British India, or to any port or place on the continent of India, or in the Island of Ceylon, unless she has as her engineer a person possessing an engine-driver's certificate granted under this Act or an engineer's certificate of either of the grades referred to in the last foregoing section.

Power for  
Local Gov-  
ernment to  
require cer-  
tain steam-  
ships to  
carry en-  
gine-drivers.

(2) The Local Government may at any time, by a like notification, cancel any notification issued by it under this section.

33. Nothing in section 31 or section 32 shall apply to any steam-ship

Exemption  
of inland

<sup>1</sup> See now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60) by which these Acts have been repealed

<sup>2</sup> The date fixed was the date the Act came into force for the Presidency of Bombay, see notification quoted on p. cxx of the Bombay List of Local Rules and Orders, Vol. I, Ed. 1896

(Chapter III—*Examination and Certificates of Engineers and Engine-drivers* Secs 34-36.)

steam-vessels.

to which the provisions of the Inland Steam-vessels Act, 1884,<sup>1</sup> are applicable VI of 1884

Penalty for serving, or engaging a person to serve as engineer or engine-driver without a certificate

34. (a) If any person who has been engaged to serve in any of the capacities referred to in section 31 or section 32 in any steam-ship to which those sections apply, respectively, proceeds in the steam-ship in that capacity without being at the time entitled to, and possessed of, the certificate required by those sections, and

(b) if any person employs any person in any capacity referred to in section 31 or section 32 in any steam-ship to which those sections apply, respectively, without ascertaining that he is at the time entitled to, and possessed of, the certificate required by those sections,

he shall be punished with fine which may extend to five hundred rupees

Production of certificates

35. The provisions of Act I of 1859 (*for the amendment of the law relating to Merchant Seamen*)<sup>2</sup> with respect to the certificates of competency or service of the master and mate contained in section 31 and section 32 of that Act shall apply to certificates of competency granted under this Act in the same manner as if certificates of competency granted to engineers under this Act were specially mentioned and included in those sections

Power for Local Government to make rules as to grant of certificates of competency.

36. The Local Government may make rules<sup>3</sup> to regulate the granting of certificates of competency under this Act, and may by such rules—

- (a) provide for the conduct of the examinations of persons desirous of obtaining certificates of competency as engineers or engine-drivers under this Act;
- (b) prescribe the qualifications to be respectively required of persons desirous of obtaining first-class engineers' certificates, second-class engineers' certificates and engine-drivers' certificates, respectively;
- (c) fix the fees to be paid by all applicants for examination; and
- (d) prescribe the form in which certificates are to be framed, and the manner in which the copy of the certificate which is kept by the Local Government is to be recorded.

<sup>1</sup> Printed, *supra*, p 713

<sup>2</sup> The Indian Merchant Shipping Act, 1858, printed, General Acts, Vol I, Ed 1898, p 167.

<sup>3</sup> For rules under this section made for the Presidency of Bombay, see Bombay List of Local Rules and Orders, Ed 1896, Vol I, pp cxx and cxxi

## CHAPTER IV.

## INVESTIGATIONS INTO EXPLOSIONS

37. (1) Whenever any explosion occurs on board any steam-ship on or near the coasts of British India, the Local Government may, if it thinks fit, direct that an investigation into the cause of the explosion be made by such person or persons as it thinks fit

Power to investigate causes of explosions on board steam-ships

(2) The person or persons so directed may enter into and on the steam-ship, with all necessary workmen and labourers, and remove any portion of the steam-ship, or of the machinery thereof, for the purpose of the investigation, and shall report to the Local Government what, in his or their opinion, was the cause of the explosion

(3) Every person making an investigation under this section shall be deemed to be a public servant within the meaning of the Indian Penal Code <sup>1</sup>

XLV of 1860

## CHAPTER V

## SUPPLEMENTAL

38. No Magistrate shall try any offence under this Act unless he is a Presidency Magistrate or a Magistrate whose powers are not less than those of a Magistrate of the first class

Jurisdiction of Magistrate.

39. If any person commits an offence against this Act, he shall be triable for the offence in any place in which he may be found, or which the Local Government, from time to time, by notification in the official Gazette, directs in this behalf, or in any other place in which he might be tried under any other law for the time being in force

Place of trial.

40. Where the owner or master of a steam-ship is adjudged under this Act to pay a fine for an offence committed with, or in relation to, that steam-ship, the Court may, in addition to any other power it may have for the purpose of compelling payment of the fine, direct that it be levied by distress and sale of the steam-ship, and the tackle, apparel and furniture thereof or so much thereof as is necessary

Distress of steam-ship

41. [*Amendment of s 13 of Act VIII of 1876*] *Rep by the Native Passenger Ships Act, 1887 (X of 1887)* <sup>2</sup>

42. (1) A Local Government making rules under this Act shall, before

Procedure for making, pub-

<sup>1</sup> Printed, General Acts Vol I, Ed 1898 p 240

<sup>2</sup> Printed General Acts, Vol V, Ed 1898, p 144

## (The Schedule.—Rates of Fees)

lication and  
confirmation  
of rules.

making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made in such manner as the Governor General in Council, from time to time, by notification in the Gazette of India, prescribes.<sup>1</sup>

(3) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(4) The Local Government shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) A rule made under this Act shall not take effect until it has been sanctioned by the Governor General in Council and published in the local official Gazette.

(6) The publication in the Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made and sanctioned.

(7) All powers to make rules conferred by this Act may be exercised from time to time as occasion requires.

## THE SCHEDULE.

(See section 10A.2)

## RATES OF FEES.

							Tons.	Rs.
For steam-ships of less than	.	.	.	.	.	.	200	40
" "	200 tons and up to	.	.	.	.	.	350	50
" "	350 " " "	.	.	.	.	.	400	60
" "	700 " " "	.	.	.	.	.	1,000	80
" "	1,000 " " "	.	.	.	.	.	1,500	100
" "	1,500 " and upwards	.	.	.	.	.	...	120

<sup>1</sup>For notification issued under this clause, see Gazette of India, 1885, Pt I, p. 578, and *ibid.*, 1891, Pt I, p. 425

<sup>2</sup>This reference was substituted for the reference to s 14 by s 22 of the Indian Steam-ships Law Amendment Act, 1890 (III of 1890), Vol V, Ed 1898, p 368

ACT No. IX OF 1884<sup>1</sup>

[16th May, 1884.]

## An Act to amend the Legal Practitioners Act, 1879, and the Indian Stamp Act, 1879.

XVIII of  
1879

WHEREAS it is expedient to amend the Legal Practitioners Act, 1879, in manner in this Act appearing ;

I of 1879.

And whereas it is also expedient to amend the Indian Stamp Act, 1879, in so far as it relates to the duty chargeable on the enrolment of legal practitioners ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Legal Practitioners Act, 1884, and

(2) It shall come into force at once

XVIII of  
1879.

2. In section 4 of the Legal Practitioners Act, 1879, for the words “as an advocate on the roll of the Chief Court of the Punjab” the words “under section 41 of this Act” shall be substituted.

3. To section 13 of the same Act the following proviso shall be added :—

“Provided that where the party is—

(a) a pardánashín woman, or

(b) unable for any sufficient cause to instruct the pleader in person,

nothing in this section shall make a pleader liable to suspension or dismissal merely by reason that he has taken instructions from a relative or friend authorized by the party to give such instructions and not receiving any remuneration in respect thereof.”

4. In section 14 of the same Act, before the words “any District Magistrate” the words “any Judge of a Court of Small Causes of a Presidency-town” shall be inserted.

5. In section 25 of the same Act, after the word “annexed” the words “and of such description as the Local Government may from time to time prescribe” shall be inserted.

6. To the first clause of section 27 of the same Act the following shall be added, namely :—“and in respect of the fees of his adversary’s revenue-agent appearing, pleading or acting under section 10.”

Short title  
and com-  
mencement

Amendment  
of section 4  
of Act XVIII  
of 1879

Addition of  
a proviso to  
section 13 of  
same Act

Amendment  
of section 14  
of same Act.

Amendment  
of section 25  
of same Act

Amendment  
of section 27  
of same Act.

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1883, Pt V, p 658 ; for Proceedings in Council, see *ibid*, Supplement, pp 1598 and 1651, and *ibid*, 1884, Supplement, p 847

Amendment  
of section 38  
of same Act.

7. In section 38 of the same Act, for the words "by the Chief Court of the Punjab" the words "under section 41 of this Act" shall be substituted.

New section  
substituted  
for section 41  
of same Act.

8. For section 41 of the same Act the following section shall be substituted, namely:—

Power for  
certain High  
Courts to  
enrol advo-  
cates.

"41. (1) A High Court not established by Royal Charter may, from time to time, with the previous sanction of the Local Government, make rules as to the qualifications and admission of proper persons to be advocates of the Court, and, subject to such rules, may enrol such and so many advocates as it thinks fit.

"(2) Every advocate so enrolled shall be entitled to appear for the suitors of the Court, and to plead or to act, or to plead and act, for those suitors, according as the Court may by its rules determine, and subject to those rules.

"(3) The High Court may dismiss any advocate so enrolled or suspend him from practice.

"(4) Provided that an advocate shall not be dismissed or suspended under this section unless he has been allowed an opportunity of defending himself before the High Court which enrolled him, and, except in the case of the Chief Court of the Punjab, unless the order of the High Court dismissing or suspending him has been confirmed by the Local Government."

New section  
added to  
same Act

9. To the same Act the following section shall be added, namely:—

Repeal of  
Acts I of  
1846 and XX  
of 1853.

"42. Act I of 1846 (*for amending the law regarding the appointment and remuneration of pleaders in the Courts of the East India Company*) and Act XX of 1853 (*to amend the law relating to pleaders in the Courts of the East India Company*) are repealed"

10. (1) [*Amendment of Schedules I and II of Act I of 1879. (Duty on enrolment of advocates)*] Rep by the Indian Stamp Act, 1899.

(2) Rep by the Repealing and Amending Act, 1891 (XII of 1891), printed, *General Acts, Vol. VI.*

ACT No. XII of 1884<sup>1</sup>

[24th July, 1884.]

An Act to amend and provide for the extension of the Northern India Takkávi Act, 1879.

X of 1879

WHEREAS it is expedient to amend the Northern India Takkávi Act, 1879, and provide for its extension to any part of British India, It is hereby enacted as follows.—

1. (1) This Act may be called the Agriculturists' Loans Act, 1884; Short title.  
and

(2) It shall come into force on the first day of August, 1884.

Commence-  
ment  
Local extent.

2. (1) This section and section 3 extend to the whole of British India

(2) The rest of this Act extends in the first instance only to the territories respectively administered by the Governor of Bombay in Council, the Lieutenant-Governors of the North-Western Provinces and the Punjab, and the Chief Commissioners of Oudh, the Central Provinces, Assam and Ajmere.

(3) But any other Local Government may, from time to time, by notification in the official Gazette, extend the rest of this Act to the whole or any part of the territories under its administration<sup>2</sup>

X of 1879

XV of 1880

3. (1) On and from the day on which this Act comes into force, the Northern India Takkávi Act, 1879, and sections 4 and 5 of the Bombay Revenue Jurisdiction Act, 1880, shall, except as regards the recovery of advances made before this Act comes into force and of the interest thereon, be repealed. Repeal of  
Act X of  
1879, and  
sections 4  
and 5 of Act  
XV of 1880.

(2) All rules made under those Acts shall be deemed to be made under this Act.

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1884, Pt V, p 2, for Proceedings in Council, see *ibid*, Supplement, pp 41, 165 and 1130

<sup>2</sup> Act XII of 1884 has by notification been extended to—

the Lower Provinces of Bengal . . . see Calcutta Gazette, 1885, Pt I, p 555;  
Lower Burma . . . . . see Burma Gazette, 1896, Pt I, p 121,  
the Madras Presidency . . . . . see Fort St George Gazette, 1886, Pt I, p  
138,

the Santhál Parganas . . . . . see Calcutta Gazette, 1885, Pt I, p 905,  
the Province of Coorg . . . . . see Coorg District Gazette, 1887, Pt I, p 670

The Act has been declared in force in the whole of Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898) Section 2 of the Act had been previously declared in force by notification under s 5 of the Scheduled Districts Act, 1874 (XIV of 1874), see Burma Gazette, 1896, Pt I, p 112, and under that section, ss 4, 5 and 6 of the Act were then extended there, see *ibid*, p 121

It has been declared in force in the Angul District by notification under s 3 (2) of the Angul District Regulation, see Calcutta Gazette, 1896, Pt I, p 1231

(Secs. 4-6.)

Power for  
Local Gov-  
ernment  
to make  
rules.

4. (1) The Local Government may, from time to time, with the previous sanction of the Governor General in Council, make rules<sup>1</sup> as to loans to be made to owners and occupiers of arable land, for the relief of distress, the purchase of seed or cattle, or any other purpose not specified in the Land Improvement Loans Act, 1883,<sup>2</sup> but connected with agricultural objects. XIX of 1883.

(2) All such rules shall be published in the local official Gazette.

Recovery of  
loans

5. Every loan made in accordance with such rules, all interest (if any) chargeable thereon, and costs (if any) incurred in making or recovering the same, shall, when they become due, be recoverable from the person to whom the loan was made, or from any person who has become surety for the repayment thereof, as if they were arrears of land-revenue or costs incurred in recovering the same due by the person to whom the loan was made or by his surety.

Liability of  
joint bor-  
rowers as  
among them-  
selves

6. When a loan is made under this Act to the members of a village-community or to any other persons on such terms that all of them are jointly and severally bound to the Government for the payment of the whole amount payable in respect thereof, and a statement showing the portion of that amount which as among themselves each is bound to contribute is entered upon the order granting the loan and is signed, marked or sealed by each of them or his agent duly authorised in this behalf and by the officer making the order, that statement shall be conclusive evidence of the portion of that amount which as among themselves each of those persons is bound to contribute.

<sup>1</sup> For rules made under this power for—

(a) Assam, *see* Assam Gazette, 1898, Pt II, p 244;  
(b) Bengal, *see* Calcutta Gazette, 1885, Pt I, p 555, *ibid*, 1886, pp 54 and 80, and *ibid*, 1897, p 1352;  
(c) Bombay, *see* Bombay List of Local Rules and Orders, Ed 1896, Vol I, p cxix;  
(d) Burma, *see* Burma Gazette, 1898, Pt I, p 540;  
(e) Central Provinces, *see* Central Provinces Gazette, 1885, Pt II, p 31;  
(f) Madras [combined with rules under s 10 of the Land Improvement Loans Act, 1883 (XIX of 1883)], *see* Fort St George Gazette, 1897, Pt I, p 1322;  
(g) North-Western Provinces, *see* North-Western Provinces and Oudh Gazette, 1890, Pt I, p 185;  
(h) Oudh *see* Ditto ditto 1892, Pt I, p. 470;  
(i) North-Western Provinces and Oudh together (amended rule 26), *see* North-Western Provinces and Oudh Gazette, 1897, Pt I, p 1062.

<sup>2</sup> Printed, *supra*, p. 658.

# INDEX.

[The references are to pages.]

Agriculturists' Loans Act, 1884 . . . . .	755
Recovery of loans, 756.	
Attorney, <i>see</i> Powers of Attorney Act, 1882.	
Code of Civil Procedure . . . . .	262
Adjournments, 308.	
Affidavits, 317.	
Appeals, 422—442.	
Appearance of parties to suits, 293—296.	
Arbitration, 412—417.	
Arrest and imprisonment, 365.	
Commissions, 383—387.	
Costs, 323.	
Decrees, <i>ex parte</i> , 295	
Definitions, 262—264.	
Documents, 299—305.	
Examination of parties, 298.	
Execution, 323—369.	
Injunctions, 408.	
Insolvent judgment-debtors, 370—375.	
Issues, 305—307. •	
Judgment and decree, 318—322.	
Jurisdiction, 267.	
Military men, 401.	
Negotiable instruments, 419.	
<i>Pardanashin women</i> , 449.	
Paupers, 387.	
Payment into Court, 380.	
Provisional remedies, 404—412.	
Public charities, 421.	
Receivers, 411.	
References to and Revision by High Court, 443	
Review, 444	
Rules relating to High Courts, 447.	
Security for costs, 381.	
Suits and suing, 267—376 ; 376—380.	

Code of Civil Procedure, 1882—*contd*

Suits in particular cases, 387-404.

Summons, 288-293.

Witnesses, 309-317.

Written statement and set off, 296

Companies, *see* Indian Companies Act, 1882

Elephants' Preservation Act (1879) Amendment Act, 1883 . . . . . 341

Explosives, *see* Indian Explosives Act, 1884.Foreclosure, *see* Transfer of Property Act, 1882.Gifts, *see* Transfer of Property Act, 1882.Health Officers, *see* Indian Merchant Shipping Act, 1883

Indian Companies Act, 1882 . . . . . 100

Application of Act to companies registered and unregistered, 164, 172.

Arbitrations, 133-136.

Articles of association, 112, 113.

Associations not for profit, 109.

Calls on shares, 110.

Contracts, 123-126.

Distribution of capital, 115-120.

Legal proceedings, 131.

Liability of members, 120-122.

Meetings, 126-130.

Memorandum of association, 102, 104

Protection of creditors and members, 122, 126.

Reduction of capital and shares, 104, 109.

Registration of companies, 165-171.

Registration offices, 162-164

Regulations for management of companies limited by shares, 176-193.

Share-warrants, 111.

Subdivision of shares, 109.

Transfer of shares, 110

Winding up companies and associations, 137-162.

Indian Emigration Act, 1883 . . . . . 668

Countries to which emigration is lawful, 669.

Depôts, 679.

Embarkation and departure, 685.

Emigration agents, 672.

Emigration overland, 697.

Foreign colonies, 696.

Offences, 691-695.

Ports of emigration, 669.

Indian Emigration Act, 1883— <i>contd.</i>	
Protectors and medical inspectors, 672.	
Recruiters, 673	
Registration and execution of agreements, 676.	
Rules, 691.	
Ships, 683.	
Vessels from Calcutta, 688.	
Indian Explosives Act, 1884 . . . . .	703
Accidents, 707.	
Arrest without warrant, 707.	
Offences, 707.	
Rules, 706	
Indian Merchant Shipping Act, 1883 . . . . .	644
Agreements with seamen, 654.	
Health Officers, 656.	
Investigations into shipping casualties, 645.	
Suspension and cancellation of certificates, 650	
Indian Paper Currency Act, 1882 . . . . .	634
Notes where legal tender and where payable, 637.	
Private bills, 639.	
Reserve, 638.	
Supply and issue of notes, 636.	
Indian Penal Code Amendment Act, 1882 . . . . .	218
Indian Salt Act, 1882 . . . . .	221
Duty and price, 224.	
Indus preventive line, 225.	
Manufacture and refining, 223	
Offences, 225—227.	
Rules, 223.	
Search, seizure, stoppage and arrest, 227—232.	
Indian Steam-ships Act, 1884 . . . . .	740
Examination and certificates of engineers and engine-drivers, 748.	
Investigations into explosions, 751.	
Rules, 747.	
Survey, 741—747.	
Indian Trusts Act, 1882 . . . . .	1
Creation of trusts, 6—9.	
Definitions, 6.	
Disabilities of trustees, 20.	
Disclaimer of trust, 8.	
Duties and liabilities of trustees, 9—16.	
Extinction of trusts, 29.	
Obligations in the nature of trusts, 29—34.	
Revocation of trust, 29.	
Rights and liabilities of the beneficiary, 22.	

Indian Trusts Act, 1882—*contd.*

Rights and powers of trustees, 16	
Vacating office of trustee, 27.	
Indian Universities (Honorary Degrees) Act, 1884 . . . . .	701
Inland Steam-vessels Act, 1884 . . . . .	713
Exemption of Government vessels, 735.	
Investigations into casualties, 725.	
Jurisdiction of Magistrates, 734.	
Masters and engineers, 721—725.	
Penalties and legal proceedings, 732.	
Protection from danger by fire, 730.	
Rules, 724, 731.	
Survey, 715—721.	
Suspension of certificates, 729.	
Land Improvement Loans Act, 1883 . . . . .	658
Repayment and recovery of loans, 660.	
Rules, 662.	
Legal Practitioners Act, 1884 . . . . .	753
Loans, <i>see</i> Land Improvement Loans Act, 1883 ; Agricultural Loans Act, 1884.	
Mortgage, <i>see</i> Transfer of Property Act, 1882.	
Negotiable Instruments, <i>see</i> Code of Civil Procedure, 1882.	
Punjab University Act, 1882 . . . . .	622
Paper Currency, <i>see</i> the Indian Paper Currency Act, 1882.	
Pardanashin women, <i>see</i> Code of Civil Procedure, 1882.	
Perpetuity, <i>see</i> Transfer of Property Act, 1882.	
Powers of Attorney Act, 1882 . . . . .	216
Rules, 217.	
Presidency Small Cause Courts Act . . . . .	590
Appeals, 602.	
Constitution of the Court, 591—594.	
Contempt of Court, 612.	
Distresses, 605—609.	
Fees and costs, 610.	
Immoveable property, 603.	
Jurisdiction, 595.	
Misconduct of officers, 612.	
New trials, 602.	
Procedure in suits, 598.	
References to High Court, 610.	
Rules, 593, 611.	
Prisoners Act Amendment Act, 1882 . . . . .	219
Public Charities, <i>see</i> Code of Civil Procedure, 1882.	

Recruiters, *see* Indian Emigration Act, 1888

Registration of companies, *see* Indian Companies Act, 1882.

Salt, *see* the Indian Salt Act, 1882.

Seamen's agreements, *see* Indian Merchant Shipping Act, 1883

Small Cause Courts, *see* Presidency Small Cause Courts Act, 1882.

Steam-ships, *see* the Indian Steam-ships Act, 1884.

Steam-vessels, *see* the Inland Steam-vessels Act, 1884.

Transfer of Property Act, 1882	40
Accommodation, 45.	
Apportionment, 51.	
Attachment of mortgaged property, 77.	
Charges, 78.	
Conditional transfer, 47	
Conditions precedent and subsequent, 47, 48.	
Contingent interest, 46.	
Definitions, 41.	
Deposit in Court, 72.	
Determination of lease, 83.	
Election, 49	
Exchange, 85.	
Foreclosure and sale, 73.	
Gifts, 86.	
Leases, 79.	
Lessors and lessees' rights and liabilities, 80, 81.	
Marshalling and contribution, 71.	
Mortgage, 61—77.	
Mortgagee's rights and liabilities, 65.	
Mortgagor's rights and liabilities, 62.	
Notice and tender, 78.	
Oral transfer, 44.	
Perpetuity, 45.	
Power of sale, 66.	
Priority, 71.	
Redemption, 75.	
Rights and liabilities of mortgagee in possession, 63, 69.	
Sale of immoveable property, 56—60.	
„ of property subject to prior mortgage, 76.	
Suits for foreclosure, sale or redemption, 73.	
Transfer of actionable claims, 88.	
„ of immoveable property, 52.	
„ of property whether moveable or immoveable, 42—49	

Transfer of Property Act, 1882—*contd.*

Vested interest, 45.

Waste, 65.

Who may transfer, 43.

Trusts, *see* the Indian Trusts Act, 1882.

Universities, *see* Indian Universities (Honorary Degrees) Act, 1884.

Winding up, *see* Indian Companies Act, 1882.

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Madras and Bombay, respectively, for the purposes of Act. 11a. (2a)
- Act XIV of 1874 (Scheduled Districts), as modified up to 1st Octo-  
ber, 1895. 6a. (1a)
- Act XV of 1874 (Laws Local Extent), as modified up to 1st Octo-  
ber, 1895. 7a (1a.)
- Act I of 1877 (Specific Relief), as modified up to 1st May, 1896. 11a.  
(2a)
- Act XV of 1877 (Limitation), as modified up to 1st December, 1892.  
12a (2a)
- Act VII of 1878 (Forests), as modified up to 1st December, 1894.  
10a. (2a)
- Act VIII of 1878 (Sea Customs), as modified up to 1st July, 1891.  
R1-5-3 (4a.)
- Act I of 1879 (Stamps), as modified up to 1st November, 1895; with  
Appendices containing Notifications reducing and remitting stamp-duties  
and publishing rules under the Act. R1. (2a.)
- Act XVII of 1879 (Dekkhan Agriculturists' Relief), as modified up  
to 1st March, 1895. 10a (2a.)
- Act XVIII of 1879 (Legal Practitioners), as modified up to 1st May,  
1896. 7a. 6p (1a)
- Act XXI of 1879 (Foreign Jurisdiction and Extradition), as modi-  
fied up to 1st May, 1896. 4a. 9p. (1a)
- Act VII of 1880 (Merchant Shipping), as modified up to 15th Octo-  
ber, 1891. 10a. (2a)
- Act V of 1881 (Probate and Administration), as modified up to 1st  
July, 1890. 12a. (2a.)
- Act XVIII of 1881 (Central Provinces Land-revenue), as modified  
up to 1st January, 1895. R1-2 (2a)
- Act XIX of 1881 (Lower Burma Forests), as modified up to 1st  
July, 1890. 10a. (2a)
- Act I of 1882 (Assam Labour and Emigration), as modified up to  
1st May, 1893 R1-2. (2a.)

## II.—REPRINTS OF ACTS AND REGULATIONS OF THE GOVERNOR GENERAL OF INDIA IN COUNCIL, AS MODIFIED BY SUBSEQUENT LEGISLATION—*contd.*

- Act IV of 1882 (Transfer of Property), as modified up to 1st April, 1893. 15*a* (2*a*)
- Act VI of 1882 (Companies), as modified up to 1st August, 1895; with Appendices containing Table B in the Schedule to Act XIX of 1857 and the Indian Companies (Memorandum of Association) Act, 1895. R1-10. (3*a*. 6*p*.)
- Act XII of 1882 (Salt), as modified up to 1st December, 1890. 6*a*. (1*a*)
- Act XIV of 1882 (Civil Procedure), as modified up to 1st July, 1888 R3 (6*a*)
- Act XV of 1882 (Presidency Small Cause Courts), as modified up to 1st February, 1895. 10*a* (2*a*)
- Act XX of 1882 (Paper Currency), as modified up to 27th June, 1893; with an Appendix containing the Indian Coinage and Paper Currency Act, 1893, and the Notifications by the Government of India in the Finance and Commerce Department, Nos 2662, 2663 and 2664, dated the 26th June, 1893, connected therewith 5*a* 6*p* (1*a* 6*p*)
- Act VIII of 1883 (Little Cocos and Preparis Islands Laws), as modified up to 1st January, 1895. 1*a*. 3*p*. (1*a*)
- Act IX of 1883 (Central Provinces Tenancy), as modified up to 1st December, 1894. 10*a*. (2*a*)
- Act IV of 1884 (Explosives), as modified up to 1st May, 1896. 4*a*. 6*p* (1*a*.)
- Act VI of 1884 (Inland Steam-vessels), as modified up to 1st July, 1891. 9*a*. (2*a*.)
- Act VII of 1884 (Steam-ships), as modified up to 1st July, 1890. 6*a*. (1*a*.)
- Act XVII of 1884 (Lower Burma Municipalities), as modified up to 1st August, 1895. R1. (2*a*. 6*p*.)
- Act XVIII of 1884 (Punjab Courts), as modified up to 1st April, 1891. 7*a*. (1*a*. 6*p*.)
- Act II of 1886 (License-tax amendment), as modified up to 1st July, 1894. 8*a* (1*a*. 6*p*)
- Act VI of 1886 (Births, Deaths and Marriages Registration), as modified up to 1st June, 1891. 6*a*. (1*a*)
- Act IV of 1889 (Merchandise Marks), as modified up to 1st June, 1891. 6*a* (1*a*.)
- Act XIII of 1889 (Cantonments), as modified up to 1st March, 1895. 7*a*. (1*a*)
- Act VIII of 1894 (Tariff), as modified up to 1st March, 1896. 9*a*. (2*a*.)
- Regulation I of 1886 (Assam Land and Revenue), as modified up to 1st June, 1894. 13*a*. (2*a*.)

## II.—REPRINTS OF ACTS AND REGULATIONS OF THE GOVERNOR GENERAL OF INDIA IN COUNCIL, AS MODIFIED BY SUBSEQUENT LEGISLATION—*concl'd*

Regulation XIV of 1887 (Upper Burma Villages), as modified up to 1st April, 1891. 5a. (1a)

## III.—ACTS AND REGULATIONS OF THE GOVERNOR GENERAL OF INDIA IN COUNCIL, AS ORIGINALLY PASSED.

Acts (unrepealed) of the Governor General of India in Council from 1854 to 1895.

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Act XXIII of 1870 (Coinage), as modified up to 27th June, 1893; with an Appendix containing the Indian Coinage and Paper Currency Act, 1893, and the Notifications by the Government of India in the Finance and Commerce Department, Nos. 2662, 2663 and 2664, dated the 26th June, 1893, connected therewith. In Urdu. 1a 3p. (1a.)

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Act XX of 1882 (Paper Currency), as modified up to 27th June,  
1883; with an Appendix containing the Indian Coinage and Paper Currency  
Act, 1893, and the Notifications by the Government of India in the Finance  
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